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PRACTICE

OF THE

OFFICE OF PLEAS,

IN

The Court of Exchequer,

BOTH ANTIENT AND MODERN,

COMPILED FROM AUTHENTIC MATERIALS;

WITH

PRECEDENTS OF PLEADINGS,

REPORTS of CASES in Points of PRACTICE

AND

The RULES of COURT which now regulate the COURSE and PRACTICE of that OFFICE.

By PHILIP BURTON, Esq;

Late SECONDARY and FIRST ATTORNEY in the said OFFICE.

VOL. I.

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1791.


GR
III
BRITISH MUSEUM

TO

THE RIGHT HONOURABLE,

SIR THOMAS PARKER, KNT.

LORD CHIEF BARON

OF HIS MAJESTY's COURT OF EXCHEQUER,

THIS WORK IS,

WITH THE GREATEST RESPECT

HUMBLY INSCRIBED,

BY HIS LORDSHIP'S

MOST OBEDIENT,

OBLIGED AND DEVOTED,

HUMBLE SERVANT,

PHILIP BURTON.

January 23, 1770.

THE

PREFACE.

I Have frequently obſerved with concern, during my eſtabliſhment in the Office of Pleas for forty years paſt and upwards, an uncommon prejudice prevailing among the attorneys and clerks in that Office, againſt every attempt to make known the utility, eaſe and ſatisfaction of ſoliciting cauſes therein.

Many attorneys in the other courts of *Weſtminſter-Hall* are unacquainted with the ſection at the end of the ſtatute of 2 *Geo.* 2. *cap.* 23. whereby they are enabled as attorneys to ſolicit in the ſeveral offices of the Court of Exchequer, without any admiſſion in that court; and few of them know what may be tranſacted in the Office of Pleas, or that they will be entituled to a full proportion *of the fees thereof*, notwithſtanding they will be freed from all the vexation and

trouble of going through the courſe of proceedings therein; and that, after having informed themſelves of the merits and ſtrength of their cauſe, they have little more to do than to prepare for the trial.

Every law book hitherto publiſhed has been entirely ſilent, as well in regard to the nature, as to the extent of the buſineſs, which is and may be tranſacted in the Office of Pleas; and in conſequence thereof, the office itſelf has been little known, and leſs ſought after by many, who if they had books to reſort to on the ſubject, might be induced to try its practice, and experience its eaſe and uſe.

A more general knowledge of the office, and a few points of its practice, well introduced into books of learning, would make it more reſpectable, and much more ſought after.

Mr. *Madox*, who hath ſhewn great induſtry and ſkill, and hath been very copious and accurate in all the other parts of his hiſtory of the Exchequer, is the only author of reputation that I know of, who has treated on the ſubject of the *placita's* of that court.

He has divided his ſubject into two periods, beginning with the reign of *William* the

the Conqueror, and bringing his hiſtory down to the end of the reign of *Edward* the Second. His ſubject of *placita's* takes up ſeveral ſections, and yet throughout his hiſtory, The *Officium Placitorum* is not once named, though ſuch an office could not be unknown to him, who was an officer for very many years in the Treaſury Remembrancer's Office of the ſame court.

Whether Mr. *Madox* was or was not of opinion, that the Office of Pleas did exiſt diſtinct from the Pipe and two Remembrancers Offices during the period of his inquiry, may be a doubt: If he was of that opinion, his ſilence concerning it muſt appear ſtrange; for though the records of that office, in thoſe times, have been in a great meaſure out of the road of the literary world; yet, if he ever read Mr. *Prynn's* Treatiſe of the Queen's Gold (which his hiſtory quotes) he muſt have known from thence, that ſuch office did then exiſt; and that he might then have ſearched thoſe records, as by acknowledgments of his own hand writing (which are now in my cuſtody) he, (afterwards) both ſearched and examined.

I have hopes that my readers, from what I have to write, will be convinced that the Office of Pleas did exiſt in the Court of Exchequer, diſtinct from all other Offices,

within Mr. *Madox*'s period of time; and that he might from the records of that Office have furniſhed more ample matter for his ſubject of *Placita's*.

His 24th chapter enumerates the ſeveral officers in the Court of Exchequer in his ſecond period of time; *viz.* In the reigns of *Henry* the Third, *Edward* the Firſt, and *Edward* the Second, but the clerk of the pleas is not named among them, being a matter which eſcaped his induſtry.

In his Epiſtolary Diſſertation on the Antient Dialogue concerning the Exchequer, he has dwelt upon the antiquity of the Red Book, which is kept in the King's Remembrancer's Office, great part of which he has made publick; and though the oaths of office, as well of the clerk of the pleas, as of the attorneys in that office (which are inſerted in the Red Book) are not of equal antiquity with the reſt of its contents; yet, as they were introduced into that book ages before Mr. *Madox* prepared his materials thereout for the preſs, he was certainly, remiſs that he did not take ſome notice why that clerk and thoſe attorneys were not in being within the period of time when the *Placita's* he was treating of (and which were peculiar to that office) exiſted.

The Rolls which are in being among the Records of the Office of Pleas at *Weſtminſter*

minſter within Mr. *Madox*'s period of time are, one Bundle in the twenty-ſecond year, and another Bundle in the twenty-fifth year of the reign of King *Edward* the Firſt, and a third Bundle in the ſecond year of the reign of King *Edward* the Second; which three Bundles might have furniſhed much matter for the *Placita's* ſought after by Mr. *Madox*.

In the Bundle of the twenty-ſecond year of *Edward* the Firſt, at the top of the twenty-ninth Roll, it is thus inſcribed, *Adhuc Plta' de Quinden' Paſch. W. de Wylugby*; and at the bottom of the indorſed ſide of the ſame roll is twice inſcribed thus *(Wylugby, Wylugby)*, and I preſume that name in the ſaid three places, could mean no other perſon than the then Clerk of the Pleas; but I have omitted this name in my liſt hereafter given of the clerks of the pleas; as I can no otherwiſe ſupport my opinion concerning this matter.

The ſame may be ſaid of the name *Pannfeld*, at the foot of the fifteenth Roll of the Bundle of the twenty-fifth of *Edward* the Firſt, and the name *Rokeſle*, after the words *adhuc de Craſtino ſci' Michis'* in the twenty-ſeventh Roll of the ſame Bundle.

By Mr. *Ball*'s manuſcript hereafter mentioned, I am inſtructed, that in the eighth

year of the Reign of King *Edward* the Third, which immediately followed Mr. *Madox*'s period; *Richard de Cheſter* was Clerk of the Pleas; and ſeven years after, namely, the fifteenth of *Edward* the Third, was King's Remembrancer; *Robert Charwelton* was Clerk of the Pleas in the thirty-fourth of *Edward* the Third, and was afterwards King's Remembrancer, and—*Edenſomere* was Clerk of the Pleas, in the thirty-ninth of *Edward* the Third, and afterwards King's Remembrancer; and if the Clerks of the Pleas were in more antient times in like manner removed into the King's Remembrancer's Office, or rather (as perhaps the caſe was) that both places were in the hands of one perſon, ſome confuſion among the records might be the conſequence; and probably enough, ſuch confuſion might have furniſhed Mr. *Madox* with ſome of his *Placita's*, out of an office to which they did not properly belong.

Sir *Edward Coke* in his fourth Inſtitute on the Court of Exchequer, explaining the words of *Britton (Et nous Barons illonques juriſdictions)* ſays, all judicial proceedings according to law in the Exchequer are *coram Baronibus*, and not *corom Theſaurario et Baronibus*; but the Court of Equity holden in the Exchequer Chamber, is holden before the Lord Treaſurer, Chancellor, and Barons, and Sir *Edward* notes, that the judicial

cial proceedings before the Barons are in Rolls, but they are not numbered as in other courts.

Mr. *Prynne*, in his Treatiſe concerning Queen Gold, *pa.* 106. quotes from the Records in the King's Remembrancer's Office, three Records in the following words, *Mich. anno* 4 *Edw.* 1. *in Offic' Rem. Regis in Scac' Rot.* 3 *Dorſ. Baronibus, pro Alienora Regina Angliæ Matre Regis*; and *Mich. anno* 7 *Edw.* 1. *incipiente* 8 *Rot.* 10 *Dorſ. in Offic' Clerici Plac.* and *Mich. ibidem* 6 *Dorſo Eſſex.*

Theſe three Records are the oldeſt to be found in the King's Remembrancers Office, they are ſtiled *Communia*, the proceſs appears therein to be the *venire facias*, they concern judicial proceedings, and are as Sir *Edward* obſerves, *coram Baronibus*; the Rolls are the ſize of common Law Rolls, and differ in their ſize from the other Records in that office, which ſeems greatly to ſupport what I have above ſuggeſted, namely, that the Officers of the King's Remembrancer, and Clerk of the Pleas were then under the management and control of one and the ſame perſon.

The many quotations in Mr. *Madox*'s hiſtory are principally taken from the record of the fines, iſſues and amerciaments extracted on account of *Placita's*, and not from the

the Records of thoſe *Placita's*, and his references are almoſt entirely confined to the Records in the ſeveral Offices of the Pipe and two Remembrancers; and though the three above named Records were quoted from one of thoſe Remembrancers Offices by Mr. *Prynn* as aboveſaid; yet Mr. *Madox* has not taken the leaſt notice of them, notwithſtanding one of them recites a mandate for the prerogative proceſs in the fourth of *Edward* the Firſt, which proceſs in the fourteenth of the ſame Reign Mr. *Madox* enquires after from Mr. *Prynn*'s account thereof, as will be mentioned in the following ſection: and though Mr. *Prynn* (in *pa.* 36.) ſets forth the prerogative proceſs itſelf, from the plea roll of the twenty-fifth of *Edward* the Third; yet Mr. *Madox* has been ſilent as to this particular, as if no ſuch prerogative proceſs was any where to be found.

In his tenth chapter, and towards the end of the eleventh ſection, Mr. *Madox*, on the ſubject of the *Aurum Reginæ*, proceeds thus; " It hath been ſaid, that the Queens Con-" ſort of *England* were, by the law or " uſage of the Exchequer, entituled to have " the prerogative proceſs, to iſſue for the " recovery of their *Aurum*; and other cre-" dits; for proof of this, Mr. *Vernon* cites " a writ out of the Exchequer, of the four-" teenth year of King *Edward* the Frſt; I " cannot

" cannot at preſent, upon ſearch (ſays Mr. " *Madox*) find this writ in either of the " two remembrancers offices." And by his note, he refers himſelf to *Vernon*'s conſideration of the Exchequer, *pa.* 52, 53. and *Prynn de auro Reginæ, pa.* 23.

Mr. *Prynn* has taken his quotations for ſeveral pages together in ſeveral parts of his book, from the records in the Office of Pleas; and particularly in *pa.* 106. above mentioned, and in *pa.* 36. where he ſays, in the plea rolls of *Hil. anno* 25 *Edw.* 3. in the Exchequer before the Barons, I found this inhibition and writ concerning Queen Gold; *in Offic' Plac' in Scac' dorſ. Surr' Suff'*, and then ſets forth the inhibition and writ, which will be found in my ſecond volume on the ſubject of the *aurum Reginæ.*

It muſt appear ſtrangely unaccountable, that a man, ſo indefatigable, copious and accurate in all other particulars, ſhould take no notice of the mandate for the prerogative proceſs inſerted, as before mentioned in one of thoſe records in the King's remembrancers office, *Dors Baronibus*; or the proceſs itſelf among the records in the Office of Pleas, or the inhibition there; or other the proceedings ſet forth at large in Mr. *Prynn*'s ſaid treatiſe; or that he has not ſo much as once named the *Officium Placitorum*

upon

upon the ſubject of *placita's*, which he ſeems ſo intent to diſcover.

In his tenth ſection, he ſays, he ſhall only mention this duty of the *aurum Reginæ* curſorily, becauſe Mr. *Prynn* hath publiſhed a treatiſe expreſly upon the ſubject; and it appears ſomewhat ſingular, that Mr. *Prynn* is here named in the body of his book, but in the 11th ſection, where the prerogative proceſs is enquired after, he quotes Mr. *Vernon*'s name in the body of his book, and very unneceſſarily throws Mr. *Prynn*'s name into a note.

Mr. *Prynn* (*pa.* 69.) takes notice of a manuſcript collection of ſundry writs, patents, commiſſions, and other proceedings in the Exchequer, communicated to him by Mr. *Arden* an attorney in the Office of Pleas; (collected thentofore, as he ſays, by one *W. B.* a clerk of that office.)

The name of that clerk was *William Ball*, he was one of the ſide clerks under his father *Robert Ball* in 1625. Mr. *Prynn* has quoted this book in ſeveral caſes, and as the book is in my cuſtody, I have extracted from it many records taken from rolls and files of writs, and bills ſtill remaining in the Office of Pleas in the earlieſt times; but ſo miſplaced and obſcured for want of care, and a proper inſpector, that

they must be regulated and cleaned before they can be referred to, with any degree of certainty or satisfaction.

I have another manuscript not quite so old; which by the title page appears to have been written in 1644. but as there is also written on the blankside of the title page (*precij* 14*s.* 1623.) in at least as antient an hand as the other; I presume part of it was written before 1644.

We are therein informed *pa.* 5. "That "the rolls of greatest antiquity then re- "maining in the custody of the chief "officer, were of *Edward* the Second's "time, and so downwards to King *Charles* "(*the first*) and that those of antienter times "(to wit, before *Edward* the Second) were "at *Westminster*, kept there in a particular "press in the keeping of the chief usher of "the Exchequer.

"That there were also in the custody "of the chief clerk divers antient files of "writs, whereby it appeared their proceed- "ings in those times were by way of *venire* "*facias*, *distringas*, *capias* and *attachments*, "and sometimes by *quominus prout in filac' brevium de* 37 *Ed.* 3.

"The forms (as he writes) were brief "and variant from the forms of his time,

"and

" and there were many writs upon this " file, ſued forth in the name of *Queen Phi-* " *lippa*, for arrears of rent and other du- " ties.

What became of the records before *Edward* the Second's reign, except the two Bundles of rolls of the twenty-ſecond and twenty-fifth of *Edward* the Firſt before mentioned; I can no ways *account for*; but I hope they will be found, among ſome of the old boxes or preſſes, which have been for many years paſt unſearched and unthought of, among the repoſitories in the court of Exchequer at *Weſtminſter*.

Since the laſt abovenamed manuſcript was written, the records from King *Charles* the Second's reign upwards, have been removed from the office to *Weſtminſter*, where they now are in preſſes placed as hereafter is deſcribed, the particulars whereof I have taken, as carefully as the confuſion they are in will permit, and inſerted them at the end of this firſt volume in their confuſed ſtate; but I have added a more orderly reference to them, for the greater conveniency of ſearchers, till they are better placed.

" The reign of King *Edward* the Third " (ſays Mr. *Prynn pa.* 109.) as it hath fur- „ niſhed us with many forecited records, " and

" and writs concerning Queen Gold; ſo upon " my ſubſequent ſearch and inquiry, I have " found and met with more of that nature, " ſome of them taken out of the collections " of others, where the writs and records " themſelves are now loſt or miſlaid, (as " moſt files of writs and plea rolls during " his and ſome of his predeceſſors and " ſucceſſors reigns are, in the Office of " Pleas, for want of a convenient room and " treaſury to preſerve them in), and the " others out of the original rolls and re- " cords now extant from which I tranſcri- " bed them."

The inconveniency of the ſituation of the old records of the office, I muſt own, are a diſcouragement to the moſt induſtrious ſearchers after truth, being in a common paſſage leading to the court of Exchequer, where there is no deſk, no ſeat, nor ſufficient light to aſſiſt him in ſuch inquiries; and *where the locks cannot turn with the key*, nor the duſt be diſcharged from the rolls, without calling in the aſſiſtance of ſome diſtant ſmith and houſwiſe.

In the year 1731. Mr. *Hall*, the then deputy clerk of the pleas, repoſted to the committee of the houſe of Commons appointed to view the *Cottonian* library, and ſuch of the publick records of this king-

dom as they thought proper, " That the " place where the records of the Office of " Pleas (before the reign of King *Charles* " the firſt) are depoſited, is inconvenient " on ſeveral accounts, as well in reſpect " of the records themſelves, as of thoſe " who conſult them; for as it is a common " paſſage where people are continually " paſſing, it is impoſſible but the records " muſt contract a great deal of duſt, eſpe- " cially the files of bills and writs, which, " from the nature of them, cannot be kept " ſo cloſe as the rolls; the place is likewiſe " dark, and made ſtill darker by being " incumbered with ſeveral old cheſts, and " other lumber; if theſe incumbrances " were removed, the records might be " conſulted more commodiouſly; but even " then there will remain an inconvenience " from their being in a paſſage."

I muſt add to this account a circumſtance or two which, I hope, will be more attended to, namely the damps and mice, both which have made fatal depredations in many of the antient records; to theſe I muſt alſo add, the careleſsneſs and hurry of the ſearchers of theſe records to get from ſuch a diſagreeable place; who have moſt generally left them in an open and rumpled ſtate, whereby the duſt and time have jointly had full power over ſuch part of them

them, as the damps and mice have been kind enough to ſpare; and many of thoſe valuable remains of antiquity will (without timely care) become totally uſeleſs and loſt to the publick.

Mr. *Gwynn* in the preface of his readings ſays, that till *Henry* the Third's time there were but two courts called the King's Courts, *viz.* The King's Bench and the Exchequer, which were then ſtiled *Curia Domini Regis*, and *Aula Regis*, becauſe they followed the Court or King: the party then was required by the writs, to appear *coram me & Juſticiariis meis*, without any addition of place.

Glanville ſpeaks of three courts, namely, the firſt in *Curia Regis*, the ſecond *ad ſcaccarium*, the third *coram juſticiariis ubicunque fuerint*.

Such of the records of theſe antient courts as are ſtill preſerved, are depoſited with great care in the *Chapter-houſe* of *Weſtminſter-abbey*, and I had hopes there, to have found ſuch of the records as are miſſing in the proper offices *ad ſcaccarium*; but though I was diſappointed in that particular, I diſcovered (by the obliging aſſiſtance of Mr. *Farley* the keeper of thoſe records)

in an entry of ſome pleas and fragments thereof, under thoſe in the reign of King *John*, the following titles; and on looking upon the records themſelves to which thoſe titles refer, we found they were titles only of former records, recited in thoſe records of the *Curia Regis*, which titles run thus, *Barones & Juſticiarii Regis in Curia Regis apud Weſtm'*, and *Judicium Baronum Regis ad Scc'ium tempore Regis Henrici primi. Suſſex.*

Whether in the firſt of theſe records the Barons, there named, were of the great Lords of the court, or the peculiar Barons of the Exchequer may be a queſtion unneceſſary for me to enter into, but the laſt appears indubitably a *placita coram Baronibus*, which exiſted in *officio placitorum* in the reign of King *Henry* the Firſt.

I have given both theſe records at large in the 2d volume, as compleat as I could make them; the latter is ſcarce legible in ſeveral places, and in others not legible at all; but as it contains a recital of one of the firſt judgments given by the Barons in *Henry* the Firſt's time (who firſt diſtinguiſhed the judges of the court of Exchequer by the title of Barons) its ſingularity makes it a record of no ſmall importance.

The PREFACE.

Several Gentlemen in the Office of Pleas within my time have been very able to publiſh a compleat account, as well concerning the buſineſs and juriſdiction of this branch of the court of Exchequer as the practice attendant thereon; and it is much to be lamented that they did not exerciſe thoſe abilities, which would have ſo well diſtinguiſhed them, and ſo highly merited the thanks of the profeſſion both within the office and without.

I have hopes and believe that the preſent Gentlemen there will in time be better reconciled to this publication, and be induced to think that the ſilence of Mr. *Madox* in his hiſtory of *Placita's*, and the little attention hitherto given to the ſupport of the office, by thoſe whoſe intereſt it was to ſupport it, has been very hurtful to it; and that the office has been deprived of many advantages, and peculiars, which might have been preſerved by a proper exertion of individuals.

It has been reported, upon what motive is immaterial, that I have been aſſiſted in this publication by other gentlemen of the office. It was greatly my deſire it ſhould have been ſo, and with that intent about a

twelvemonth ſince I made it my requeſt, that the publication might be made a joint concern, and I actually met the other three attorneys to lay my ſcheme before them, and I had brought with me a rude ſketch of that which is now ſubmitted to the publick, for their opinion concerning it, and I had great reaſon to hope from two of them, that it might be effected, but I was early prevented making any further mention of it at the meeting after having produced my papers, by a third telling me, I might paſs it as the work of the office in general if I would, but he was for no publication at all.

Mr. *Kinaſton* and Mr. *Jortin* very kindly offered me their aſſiſtance, by ſome manuſcripts in their hands, but on comparing them with the two manuſcripts mentioned above, I found theirs incompleat copies of mine, by which we were alike diſappointed; however their intentions have equally put me under obligations to them; I am alſo indebted to Mr. *Edmunds* for lending me his copy of ſome very valuable manuſcript reaſonings in ſupport of the plea to the juriſdiction of the court of King's Bench in *Wales*; but as they are foreign to my ſubject they can be of no uſe in the preſent caſe; I may therefore very juſtly ſay, I

hav

have had no help whatſoever from any one or more of the gentlemen in the office.

Upon the death of one *Edwards*, a very induſtrious writer in the office, which happened ſince part of this work was ſent to the preſs, I offered money for the references and precedents which he had collected, but his widow could not get them out of the hands of another perſon, ſo that I loſt that little reſource. I had paid *Edwards* for copies of part in his life time, but from that part I have only made uſe of the writ of reſtitution, which will be found in my ſecond volume.

As to matters of practice only, the ſubject I apprehend lies within a very narrow compaſs; the clerk in court makes out all writs, draws and copies all declarations, pleadings, iſſues, paper books, and gives all rules, ingroſſes all records and inquiries, and enters every thing upon the Roll, for all which the ſolicitor has his allowances without doing any thing.

By publiſhing a variety of antient as well as modern precedents, I have endeavoured to make the ſolicitor acquainted with the mode, extent, and peculiar form of proceedings in the Office of Pleas; and as the

variety and extent of the *placita's* of the office are known to very few, I have thought expedient to ſet forth the ſeveral cauſes of action, the prohibitions to other courts, and the removals from them, and the extent of juriſdiction in this branch of the court of Exchequer; that the ſeveral rules of practice incident thereupon may be better known, and properly applied; to all which I have added ſuch obſervations, and reports of caſes, as I have been able within the time allowed me to ſelect from books of authority, and what other matters have occurred to me in the courſe of my practice.

I ſhall conclude with divers extracts from the antient records; all which I ſubmit to my indulgent readers obſervations; eſpecially as to what has been omitted in Mr. *Madox*'s hiſtory, which will require ſomewhat more from me, than bare extracts; and, I hope, my endeavours herein (deficient as they are) will not be abſolutely thrown away.

I have further enlarged this little part of my collection, with a few ſingular records, to amuſe ſuch as are diſcontented with our preſent times; they will there find, that in the reigns of one or more of our moſt illuſtrious

trious monarchs, (ſuch as *Edward* the Third), trials were had without juries, and executions iſſued without judgments; which when candidly compared, and conſidered with our modern proceedings, ought to make us thankful to providence, that we are not ſubject to ſuch times, though at this diſtance they appear ſo glorious to us.

The ſmallneſs of the number of gentlemen in the Office of Pleas, by whom all theſe matters are tranſacted, make their conduct more conſpicuous, and their practice more uniform, and leſs liable to be corrupted, than among ſuch a number of practitioners as fill up the other courts of *Weſtminſter-Hall.*

The novelty of this treatiſe will I hope excuſe the deficiencies, and miſtakes, which I have probably enough made in it; and induce ſome other perſon, who has more time, and greater abilities, to perfect my intentions.

My principal view herein hath been for the inſtructions of the ſolicitor, and to acquaint him not only with the modern buſineſs of the office, but with what hath been, and may be tranſacted there again, when the extent of it is better known, and the

the friends to it are become more general and powerful; and that this method might be rendered more conciſe and intelligible, I have placed moſt of the precedents antient as well as modern, by themſelves in an appendix; which I have thrown into an alphabetical order, with references to the records from whence the ſame have been taken.

If I have tranſgreſſed the bounds I had ſet to myſelf, by dwelling too much on the *aurum Reginæ*, and other matters of old times; I hope the reader will attribute it to my deſire of making this work as uſeful and extenſive as I can; and in the language of Mr. *Robertſon*'s preface to his excellent hiſtory of *Charles* the Fifth, that the remote and minute events on this ſubject, may prove objects ſuited to ſome curious perſon, and give him ſuch pleaſurable gratifications, as will be productive of publick utility; and peculiar in its conſequences to the Office of Pleas.

The names of the Chief Barons and clerks of the pleas, being uſually one or both found inſerted in all writs and records; it may be of uſe to thoſe, who are deſirous of inſpecting the old records, to have ſeparate liſts of both; I have therefore

fore inſerted them, commencing as to the Chief Barons, from the reign of *Edward* the Firſt incluſive, and as to the clerks of the pleas, from the reign of *Edward* the Third incluſive, and I have diſtinguiſhed the dates of their ſeveral commencements as correctly as I could.

I have alſo added the ſeveral titles of the King's of *England*, and the names and dates of the times of their ſeveral Queens conſorts down to *Henry* the Eighth incluſive, as a clew to the old records, and particularly as to what concerns the Queens dues, which in a great meaſure ended with the reign of *Henry* the Eighth (his ſucceſſors King *Edward* the Sixth dying a batchelor, and the Queens *Mary* and *Elizabeth* having no claim to thoſe dues, as holding the crown in their own right), that in caſe ſuch part of the *aurum Reginæ*, and other dues, which remain ſtill to be claimed by the Queens conſorts, ſhould ever hereafter be thought of conſequence enough to be brought into queſtion, the ſearcher into the Records relative to them, may be aſſiſted.

Such Reports of Caſes as have been publiſhed, and were peculiar to this branch of the Court of Exchequer, are as follows: The Honourable *Richard Lane*'s Reports, in

in the reign of King *James* the First, which is ſaid in the title of the book, to be the firſt collection in that court then extant: Sir *John Savile*'s reports in the time of Queen *Elizabeth*, which were publiſhed in *French* in 1675. Sir *Thomas Hardres*'s Reports, in the reign of King *Charles* the Second, and Mr. *Bunbury*'s Reports, in the two laſt reigns; from all which books I have extracted ſuch of the caſes as peculiarly relate to the Office of Pleas, being the only books that I know of, adapted to the uſe of thoſe for whom I am now writing.

I have endeavoured throughout this work to avoid giving offence to the practicers in the other courts of *Weſtminſter-Hall*, and had therefore deſignedly omitted any diſcourſe concerning the plea to the juriſdiction of the court of King's Bench in *Wales*, and I hope what little I have to ſay on the ſubject will give no offence to any but the perſon who, ſince this book was ſent to the preſs, inſerted an uncandid paragraph in the *Dayly Gazetteer* of the 13th of *November* laſt, in the following words:

" *Thurſday* came on to be heard in the " court of King's Bench, a demurrer to a " plea in abatement, in a cauſe between " *Thomas Lloyd*, Eſq; plaintiff, and *Evan* " *Jones*,

" *Jones*, defendant, reſpecting the Juriſ-
" diction of that Court within the Princi-
" pality of *Wales*; when, after many learn-
" ed debates by the counſel on both ſides,
" the court, *una voce*, determined beyond a
" doubt, in favour of the demurrer, and order-
" ed that the defendant ſhould anſwer over.
" This is a determination which has been
" long wiſhed for by the profeſſion at large,
" and which will indubitably eſtabliſh the
" power of the above court againſt every
" encroachment of the Court of Exche-
" quer of Pleas."

This charge on the Court of Exchequer was very unwarrantable and inconſiderate; and was in a great degree ſo as to what concerned the Court of King's Bench: the falſity of it may ſpread, where the truth cannot ſo eaſily be brought to light; I am therefore excuſable in ſaying ſomething which may take off that malevolence which was intended by ſuch a publication.

The point upon this queſtion was determined more than twenty years ago in favour of the Plea. It was (ſays Mr. Serjeant *Wilſon*, in his Reports, juſt publiſhed) four times moſt ſolemnly argued at the bar, by gentlemen of the greateſt learning and experience. Three of thoſe arguments were in

in the cauſe of *Lampley* and *Thomas*, in the nineteenth year of the reign of the late King; but that cauſe abating, it was argued a fourth time in the cauſe of *Jones* againſt *Jones*, and as the ſubject had been quite exhauſted before, nothing more that was new could be ſaid upon it; and ſo the court in *Hilary* Term, 21 *Geo.* 2. 1747, gave Judgment for the Defendant, and allowed the plea, without ſaying more than theſe words, *viz. Breve Domini Regis de Latitat non currit in Wallia.* See *Wilſon* 193.

Upon the judgment which was given laſt term in the court of King's Bench, and miſrepreſented as above in the *Gazetteer*; no queſtion of this ſort was moved or argued; the only queſtion then was, Whether the defendant ſhould have further time given him to ſupport his plea or not; the court thought proper to refuſe it, and the defendant being unprepared for an argument of ſuch importance, declined it, and judgment was given *niſi* in the uſual courſe, which determined nothing relative to the juriſdiction of that court.

As to the queſtion of juriſdiction in any other court but that of the Exchequer, this work has nothing to do with it: it ſeems no further incumbent on me, than to take off

off the miſchief intended by the above ill deſigned article of news; by juſtifying the law branch of the court of Exchequer from every imputation of an encroachment.

For this purpoſe therefore I have in this book added a ſection, wherein my readers will I hope be ſatisfied, that the juriſdiction of the court of Exchequer in *Wales*, ſo far from being an encroachment, was eſtabliſhed by an original juriſdiction in *Edward* the Firſt's time.

That monarch compleated the conqueſt of *Wales*, and iſſued his Exchequer proceſs thither; which proceſs into *Wales* hath iſſued out of the Office of Pleas of this court uniformly and uninterruptedly ever ſince, as I ſhall make appear from the records of thoſe times.

The firſt iſſuing of *Latitats* into *Wales* hath been within the memory of very many practicers now living; what the conſequence of this innovation may be, I do not preſume to enter into; the court of King's Bench will do what is right therein, and therefore I leave this diſagreeable ſubject to time, and the further determination of that court concerning it.

In

The PREFACE.

In a book called the book of Orders of *Mich.* 17 & 18 *Eliz.* in this office is the following entry,

ſſ. Et ſciend' eſt quod tria prima retorna hujus termini videl't Octab' ſci' Mich'is, quindena ſci' Mich'is & tres Septiman' ſci' Mich'is propter infectionem plage in preſentiarum in diverſis locis circa civitates London & Weſtm' et in aliis villis & locis hujus Regni Angliæ per quas aditus ap —— ejuſdem Regni per eaſdem tranſeuntes partes adjornantur inde per generalem proclam' Et per breve quoque ejuſdem Domine Regine geren' dat' apud Woodſtocke in com' Oxon' 26to die Septembr' anno r'ni ſui 170 ad in et uſque menſem ſci' Mich'is ex tunc prox ſequen'.

Theſe adjournments on account of the plague were frequent till within the laſt century. I believe the laſt adjournment was in *Hilary* term 1665. when the court of Exchequer was removed to *Windſor-Caſtle* on that account.

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THE

THE BUSINESS and PRACTICE IN THE Exchequer Office of Pleas.

Of the Court of Exchequer, ſo far as it relates to this Treatiſe.

THE Court of Exchequer is an antient court of record, wherein all cauſes touching the revenue and rights of the Crown are peculiarly heard and determined; and where, by 4 *Inſt.* 112. the debtors of the king, and their debtors, are privileged to ſue and be ſued.

The court of Exchequer an antient court, where the debtors of the king and their debtors are privileged;

By the ſame, *Inſt. p.* 103. the authority of this court is deſcribed to be of original juriſdiction, without any commiſſion, and is divided into two parts; namely, into judicial accounts, called *Scaccarium Computorum*, and into the receipt of the exchequer: and *Ocham* ſays, *Una origo utriuſque Scaccarii, ſuperioris ſcilicet & inferioris; ſed quicquid in ſuperiori computatur, in inferiori ſolvitur.*

is of original juriſdiction, without any Commiſſion, and is divided into two for accounting, and for paying.

In the Exchequer there are ſeven courts; 1. The Court of Pleas. 2. The Court of Accounts. 3. The Court of Receipt. 4. The

In the Exchequer are ſeven courts.

Court of Exchequer-Chamber, being the aſſembly of all the judges of *England* for matters in law. 5. The Court of Exchequer-Chamber for errors in the Court of Exchequer, 31 *Ed.* 3. *cap.* 8. and 31 *Eliz. cap.* 1. 6. The Court of Exchequer-Chamber for errors in the Court of King's Bench, 27 *Eliz. cap.* 8. 31 *Eliz. cap.* 1. *Co. pl. Intr.* fo. 2, 24, 37. 7. The Court of Equity in the Exchequer-Chamber, 4 *Inſt.* 119.

The 1ſt, 4th and 5th to be the ſubject of this treatiſe.

The firſt, fourth and fifth of theſe courts will be the ſubject of this Treatiſe; the buſineſs whereof is carried on in the Office of Pleas in *Lincolns-Inn*, after the courſe of the common law *coram Baronibus*.

Ordinance not to delay ſuits in the Exchequer.

And firſt, by the ſtatute of *Weſtminſter*, 20 *Edw.* 3. it is ordained as follows: In the ſame manner we have ordained and eſtabliſhed in the right of the barons of the Exchequer, and we have expreſly charged them in our preſence, that they ſhall do right and reaſon to all our ſubjects, great and ſmall; and that they ſhall deliver the people reaſonably, and without delay of the buſineſſes which they have to do before them, without undue tarrying, as hath been done in times paſt.

Two privy ſeals to obſerve and keep the ordinances and cuſtoms in the Exchequer.

And in *Eaſter* 26 *Hen.* 6. two privy ſeals were awarded; one to the treaſurer and barons of Exchequer; the other to the barons, commanding them to obſerve and keep the good old laudable and approved ordinances and cuſtoms in the Exchequer, which, for the long continuance of them, ought to be held and had been as a law; any the king's letters, grants, commands or ordinances to the contrary notwithſtanding.

Privy ſeal appointing ſet days to deter-

And in *Eaſter* 22 *Edw.* 4. a privy ſeal was directed to the treaſurer and barons of the Exchequer,

chequer, commanding, that for the ſpeed of accountants and other ſuitors, ſome of them ſhould ſit every *Wedneſday* and *Friday* in the Exchequer-Chamber, to hear and determine all manner of pleas between king and party, and party and party; and to proceed according to the law, and courſe and cuſtom of the Exchequer; and that at ſuch times ſome of the barons ſhould ſit in the Court of Exchequer, for the ſpeedy deliverance of accountants.

mine cauſes and deliverance of accountants.

Sir *Edward Coke*, in his ſaid 4 *Inſt.* commentating on the words of *Briton*, *El nous barons illouques juriſdiction*, ſays, All judicial proceedings, according to law in the Exchequer, are *coram baronibus*, and not *coram theſaurario & baronibus*; but the Court of Equity holden in the Exchequer-Chamber is holden before the lord treaſurer, chancellor and barons: and note, (ſays he) the judicial proceedings before the barons are in rolls, but they are not numbered as in other courts. 28 *Hen.* 6. 11, 12. 5 *Ric.* 2. *cap.* 9. *ſtat.* 1. 20 *Edw.* 3. *cap.* 2.

The law proceedings are *coram baronibus*, and there judicial proceedings are in rolls.

The Equity proceedings in the Exchequer Chamber are *coram theſaurar', cancell' & baron'.*

So great care was taken by the court of the Exchequer, (which is the center of the king's revenue and profit) that no man might ſue or plead for their diſcharge of any debts, account or other demand, without having expreſs commandment by writ or letter of the great ſeal: but by the ſtatute of 5 *Ric.* 2. *cap.* 9. it appeared that the parties ought to have been received thereunto, according to the law, without any ſuch writ or letter; and that the obtaining of ſuch writs or letters, was to the great diſquietneſs, miſchief and delay of the parties impeached, and no advantage to the king; and where, before that time, no plea could be allowed in the Exchequer by attorney, but in proper perſon,

No man might antiently ſue or plead without the king's leave by writ under the great ſeal, till 5 *Ric.* 2.

ſon. By the ſaid act it is ordained, that the barons of the exchequer ſhall have full power to hear every anſwer of every demand made in the ſame; ſo that every perſon that is impeached or impeachable of any cauſe, by himſelf or by any perſon (that is by his attorney) ſhall be received in the exchequer to plead, ſue and have his reaſonable diſcharge, without carrying or ſuing any writ or other commandment whatſoever, ſo as by this act both theſe miſchiefs are provided for; and out of this act this general concluſion may be juſtly collected, that ſuch courſe of the Exchequer, as tendeth to the diſquietneſs, miſchief and delay of the ſubject, and no advantage to the king, is againſt law, and ought not to be allowed: and it is to be obſerved, that *Britton* doth join in this clauſe the treaſurers and barons. *Co.* 4 *Inſt.* 110.

Of the Office of Pleas in the Exchequer.

The plaintiff in the Office of Pleas must be a debtor to the king, by the original inſtitution of the office;

The plaintiff in the Office of Pleas, by the original inſtitution of it, ought to be a tenant or debtor to the king, or ſome way accountant to him: but ſuch is the caſe of every one of his ſubjects, who, as his debtors, are alike privileged to ſue, and are alſo alike liable to be ſued in this office.

but that diſtinction is unneceſſary in the proceedings.

And tho' *debitor domini regis* was, and ſtill is the characteriſtic form of the court, yet the leaving thoſe words out of the proceedings will not hurt them, as will appear by the forms of our moſt antient records, and by determinations, which will be taken further notice of hereafter.

The perſons who conſtitute the Office of Pleas.

The Office of Pleas conſiſts of the following perſons; namely, the prothonotary or chief clerk therein, ſtiled the clerk of the pleas, but more

more commonly called the maſter of the office and his Deputy.

And under him, four other clerks, ſtiled the ſworn clerks, but more commonly called the four attornies in the Office of Pleas.

And under them, ſixteen clerks called ſide clerks.

And under them all, a bag-bearer.

The place of clerk of the pleas in the gift of the chancellor of the exchequer.

The place of prothonotary, or chief clerk of the pleas, *is in the gift* of the chancellor of the Exchequer for the time being, who diſpoſes thereof as often as there is a vacancy; and when the chancellor hath elected him, he preſents him to the barons, having firſt given him a patent under the green wax and ſeal of the Exchequer, to enjoy the office *quamdiu ſe bene geſſerit.*

The oaths to be adminiſtred before he can officiate.

The barons thereupon adminiſter to him the oaths of allegiance and ſupremacy, and an oath for the due and juſt execution of his office, which is adminiſtred to him out of the red book, (which is one of the moſt antient books in the cuſtody of the king's remembrancer of this court); and, after having taken theſe oaths, the ſaid chief clerk or maſter is allowed and authorized to officiate as ſuch.

The law of 5 *Ric.* 2. requiring the clerk of the pleas to be learned in the law.

There is an excellent law, ſays Sir *Edward Coke*, in his ſaid 4 *Inſt. p.* 109. made in 5 *Ric.* 2. whereby it is enacted, That from thenceforth no baron of the exchequer, clerk of the pipe, remembrancer, oppoſer, comptroller, clerk of the pleas, and clerk of the foreign ſummons, auditor, or other chief officer of the exchequer, be made, unleſs he be well learned in the law, or otherwiſe very ſkilful in the courſes and uſages of the exchequer. Here is the heartſtring of this court; for albeit the laws

and orders thereof be moſt excellent, yet the benefit thereof conſiſts in good and ſkilful officers and miniſters.

The preſent clerk of the pleas, when appointed.

Sir *Edward Walpole*, the preſent clerk of the pleas, was conſtituted ſuch by grant, dated 27 *November* 1727, under the hand and ſeal of his late ennobled father, the firſt earl of *Orford*, as chancellor of the exchequer; to hold to the ſaid Sir *Edward* and his aſſigns, ſo long as he ſhould behave well, according to the antient cuſtom of the court of exchequer; which inſtrument is inrolled of *Mich.* 1727.

His duty.

The ſervice, charge and attendance belonging to the ſaid office of clerk of the pleas, is to ſign all original, meſne and judicial proceſs iſſuing out of the ſaid office, except ſubpœna's *ad reſpondendum*, and their ſubſequent proceſſes of contempt; and all rules of court made in ſuits commenced in the ſaid office, and to enter all pleadings, and give rules for pleas; and in default of a plea, to ſign judgment, whether final or interlocutory, as the caſe requires; and in caſe the judgment be final, to docquet the ſame, and to give memorials thereof, if required, and to enter all original proceſs, and enrol all deeds and recognizances; to record appearances, and ſign records of *Niſi prius*, or by *mittimus* and tranſcript, or exemplification of any record; to enter ſpecial bail, warrants of attorney, and commitments of priſoners; to tax all bills of coſts on judgments or rules of court; take affidavits to hold to bail, and ſtrike ſpecial juries; but the inrolment of deeds and recognizances is done by the attornies in the ſaid office, who, as well as the ſaid clerk of the pleas, are intitled to their ſeveral antient fees in reſpect thereof, as herein after will be mentioned.

The

The clerk of the pleas is alſo clerk of the errors in the ſaid office, and as ſuch, it is his duty to inrol all writs of error brought upon judgment in the ſaid office, and returnable in the exchequer-chamber; and if errors are aſſigned, to enter them, and to ſign the tranſcript of the ſaid record; to prepare papers of the cauſes in error; and to give a copy of the names of ſuch cauſes to the lord chancellor, lord treaſurer, lord chief juſtices of the King's Bench and Common Pleas, the lord chief baron, and the reſt of the barons, a convenient time before the error day; and then to attend in the exchequer-chamber to read over the cauſes, and take minutes of the proceedings, and to draw up ſuch rules as are there made, relating to the ſaid cauſes; and in caſe, after judgment given in the Exchequer-chamber, a writ of error be iſſued returnable in parliament, the ſame, after it is allowed by the lord chief baron, is to be inrolled by the ſaid clerk of the pleas; and if the ſaid writ be returned, it is uſual for him or his deputy to carry up the tranſcript, and deliver the ſame at the door of the houſe of lords, to the lord chief baron; and what further is done therewith will be related hereafter, under the title of Errors in Parliament.

He is alſo clerk of the errors.

The ſaid clerk of the pleas is alſo to provide, at his own expence, the rolls and paper books hereafter mentioned, for the entry of rules, appearances, and other proceedings; and to give daily attendance for the execution of the ſaid office, (*Sundays* and holidays excepted) and to examine all proceedings referred to him by the court, and to report the ſame without fee or reward.

Provides rolls and paper books;

and gives attendance for executing his office.

Provides minute books, and enters minutes of what is done in court, and enters them in the book of orders.

It is the duty of the ſaid clerk of the pleas to attend the court of exchequer at *Weſtminſter* every morning except *Mondays*, *Thurſdays* and holidays in term time; and provide minute books, in which he enters minutes of all rules and orders made in court touching the proceedings in the ſaid office, and to enter them in a book called the Book of Orders, which he alſo provides, and to make copies thereof when required.

Gives rules for pleadings of all kinds, and ſigns judgment, and enters other judicial acts in the ſame book, and keeps it for publick uſe, for the parties to ſee what has been done in each cauſe.

He alſo gives rules for pleadings of all kinds, and ſigns judgments, and enters other judicial acts, in the ſame book of orders, and keeps the ſame for the publick uſe of the attornies, and ſide-clerks in the ſaid office; that they may give notices of every kind, and enter all other their proceedings therein, whereby the parties, both plaintiffs and defendants, may receive information, what hath been done in each cauſe, and where it reſts.

Rules in court to be taken by the maſter, and entered in the book of orders.

Concerning rules and orders in court by the old rules, it is ordered, That "all the rules, "and orders made in court, touching any "matter depending in the office of pleas, "ſhall be carefully taken in court by the "maſter of the ſaid office, or ſome of the "ſworn clerks of the ſaid office in his abſence; "and that all ſuch rules and orders ſhall be "drawn, according to the true direction and "meaning of the court; and that there be a "due entry made of all ſuch orders, in a ge-"neral book appointed for that purpoſe in the "ſaid office, and to make true copies of the "ſame orders when they ſhall be required."

And is chargeable with the ſaid books of

The ſaid maſter is alſo chargeable with the ſaid books of orders, and entries thereupon, of all pleadings between party and party, warrants

rants of attorney, deeds, &c. and it is his duty to take care that ſtrangers come not near the books of orders or rolls, to purloin, imbezil, alter, or eraſe any thing in them.

orders and rolls, and that ſtrangers do not meddle with them.

The rolls which are in his charge, in the office in *Lincoln's Inn*, are from the death of King *Charles* the Firſt downwards, to the preſent time; and from thence upwards, to *Edward* the firſt's time incluſive; they are kept in particular preſſes at *Weſtminſter*, the particulars whereof will be given hereafter at large.

What rolls are in his keeping.

He is alſo chargeable with a file called the file of writs in the ſaid office, upon which all writs executed and returned by the ſheriff are filed in their due term and time.

Provides the file of writs.

And alſo with another file called the file of bills, whereupon all the bills or declarations in the ſaid office are filed in the ſeveral terms in which they were commenced; and alſo all bail-pieces and affidavits touching any matter or proceeding in the ſaid office.

And file of bills.

Theſe files are carefully to be kept from the hands and ſearch of all, but ſworn clerks of the ſaid office, and their clerks, or ſervants, leſt any thing be embezilled or altered to the prejudice of any man.

To be kept from ſtrangers.

There is alſo another book called the book of appearances, with which he is chargeable where every defendant that is ſerved by the proceſs of the office of pleas, or attached or diſtrained for not appearing to ſuch proceſs, or by *ſuperſedeas* or other order of the court, may enter and record his appearance; and therein rules for plaintiffs to declare are to be given under the entry of the appearance, and judgment of *non pros* are thereunder to be ſigned, if the plaintiff ſhould not declare in due time.

Alſo books of appearances.

This

For the general uſe of the office.

This book of appearances is alſo for the general uſe of the ſworn clerks in the office, and is to be kept from the view of ſtrangers, and to continue in the cuſtody of the chief clerk or maſter of the ſaid office.

To find forelis, &c.

The ſaid chief clerk or maſter is (at his own charge alſo, to find, provide and ſupply all forells and ſtrings for the file of bills and writs, and alſo paper-books for the entry of the appearances, and other matters appertaining to his office; and alſo a convenient place with proper rooms for the execution of his ſaid office, and ſafe keeping of the records thereof; and for tranſacting the buſineſs carried on therein by the attornies and ſide-clerks hereafter mentioned in all its branches.

And a writ-book to make entries of writs and records.

He keeps a book of remembrance for all writs of *Venire facias*, *Diſtringas*, *Quo minus*, and of all records iſſuing out of the ſaid office.

And docket-book of rolls and judgments.

He alſo keeps docket-books, ſome of which refer to the Rolls, and others to the judgments in the book of orders, the oldeſt of which is in the reign of Queen *Elizabeth*.

Repertories of the antient records.

There are ſeveral old repertories of the records; namely, one during the reigns of *Edward* the Third, *Richard* the Second, and *Henry* the Fourth; another during the reigns of *Henry* the Fifth and *Henry* the Sixth; a third during the reigns of *Edward* the Fourth, and *Richard* the Third; and a fourth during the reign of *Henry* the Seventh.

The maſter's fees.

The maſter's liſt of fees are hereafter ſet forth; beſides which he receives from the chamberlain of the Exchequer every term a bag of neceſſaries; namely, paper, pens and ink; and as a conſideration for the eſtreating of the fines, iſſues, and amerciaments, he receives out

of the tellers office the yearly ſum of five pounds from the receipt of the Exchequer, to be paid every ſecond year.

Having ſet forth the duty of the clerk of the pleas, the duty of his deputy is ſufficiently given. He is appointed by the clerk of the pleas whoſe place is become an abſolute *ſine-cure*, and the deputy goes through all the fatigue and duty of that office which ought to be executed by his principal.

The four under clerks or attornies.

The four under clerks or attornies of the ſaid office (whenever a vacancy happens to be) are ſupplied out of the ſixteen ſide-clerks hereafter mentioned, and are nominated by the chief clerk or maſter of the office, and approved of by the barons.

Their appointment.

Their appointment is verbal, and on ſubſcribing an oath of office to the chief clerk or maſter, and on taking the oath of allegiance and ſupremacy, and an oath in open court out of the ſaid red book, they are eſtabliſhed *quam diu ſe bene geſſerint*.

Their duty.

The ſervice, charge and attendance of the ſaid ſworn clerks or attornies, is in all cauſes wherein they are reſpectively imployed, to make out the ſeveral proceſs that iſſue out of the ſaid office, and enter appearances in their own names, and draw and ingroſs all bills or declarations, iſſues, and other pleadings neceſſary to bring the cauſes to trial, judgment, or other proper determination; and to exemplify pleadings in the ſaid office, and inrol deeds and wills, and to attend all trials at bar, where the ſenior attorney as ſecondary reads all written evidence that either plaintiffs or defendants make uſe of at ſuch trials.

They

They are alſo to attend motions in court relative to the ſaid office, and read all records, affidavits, rules of court, and other proceedings that are neceſſary to be read on account thereof; and in ſuch cauſes wherein they are reſpectively imployed, they attend trials by *niſi prius* in *London* and *Middleſex*, and references to the maſter, taxations of bills of coſts, putting in bail and juſtifying the ſame either in court or at a baron's chambers.

Proſecute all writs of error.

They alſo proſecute all writs of error brought upon judgments in the ſaid office, and attend in the Exchequer chamber upon error days, and prepare bills of coſts upon writs of error, to be preſented to the lord chancellor (after the determination) for his allowance and ſigning.

Eſtreat all iſſues, fines and amerciaments ſet, &c. in the ſaid office.

They eſtreat all amerciaments impoſed on ſheriffs in the ſaid office, and all fines and iſſues ſet and returned upon any perſons in the ſaid office.

Their fees.

Their fees are hereafter ſet forth, beſides which they receive for writing and eſtreating the iſſues, fines and amerciaments in the ſaid office, an allowance out of the tellers office of an annual ſum of thirty ſhillings, payable every ſecond year, to be equally divided between the ſaid four attornies.

Fees out of the tellers office when paid.

It appears by the manuſcript in 1644, that one of thoſe payments was made in 1633, but how much further back ſuch payment may be traced ſeems immaterial at preſent; the defective account of this payment delivered to the commiſſioners of inquiry into the fees of office in 1731, occaſioned this little anecdote, which may ſoon be traced further back in the offices of the auditor or of the clerk of the pells, in the

the receipt of the court of Exchequer, when occaſion requires.

The ſenior of the four attornies or ſworn clerks is ſecondary in the ſaid office, and on the death, or ſurrender, or removal of the clerk of the pleas, is intitled to act as clerk of the pleas, and to receive the fees and profits belonging to the ſaid office to his own uſe, until a new clerk of the pleas is appointed and eſtabliſhed.

The ſenior attorney is ſecondary.

He alſo as ſecondary claims an antient fee of 8 *d.* for every bail, or recognizance taken in court, or at the baron's chambers; and was uſed in the abſence of the maſter, by ſickneſs or otherwiſe, to take the minutes of the court; but now the taking the minutes, like the claim of the above antient fee, are alike become obſolete; and the four attornies, ſome or one of them, as conveniency permits them to attend the court, do as well the duty of the maſter in his abſence, as their own, and the antient fee is almoſt forgotten.

His fees as ſecondary.

It was his province alſo to attend every general ſeal day at *Weſtminſter*, to make out the writ of *Liberate*, for payment to the chief uſher of the Exchequer, the money expended by him for the neceſſaries provided for the Exchequer; at which time, he filed in the office on the file of bills the bill of neceſſaries, after the ſame had been allowed and ſigned by the lord treaſurer, when ſuch there was; but ſince the treaſury has been put in commiſſion, the chancellor of the Exchequer ſigns the bill of neceſſaries, and the attendance thereon has been of late the peculiar of the junior attorney, who receives each time for his fee on account thereof, a bag with ſix quire of paper, a quarter of a hundred

To attend and make out the *liberate* was uſed to be the province of the ſecondary, but is now become the peculiar of the junior attorney.

hundred of pens, a ſtick of ſealing wax, a box of wafers, and at *Chriſtmas* an almanack.

The ſecondary ſtill receives his fee of twenty ſhillings for attending each trial at bar which is his peculiar, and it is his duty to call on the cauſe, and take the verdict, and read the exhibits, for which he has 1 *s.* each exhibit.

Vacancy of the four attornies ſupplied out of the ſixteen ſide-clerks by the maſter, with the conſent of the barons.

In caſe of any vacancy of one or more of the ſaid four attornies by death or otherwiſe, they are ſupplied out of the ſixteen ſide clerks as has been above mentioned; and though the diſpoſal is in the maſter (with the barons approbation) yet it has been a complement uſually paid by the maſter to the ſenior ſide clerk of the diviſion in which the vacancy has happened, provided the terms are ſubmitted to.

The ſide-clerks.

The ſaid four attornies are, by the cuſtom of the office, intitled to take articled clerks, who are ſtiled ſide-clerks, and are not to exceed four under each attorney.

Their number and eſtabliſhment.

Each of theſe ſide-clerks (being ſixteen in all) after ſerving their clerkſhips of five years, are intitled to practice in the name of their reſpective maſters, or in the name of any other of the four attornies of the ſaid office with ſuch maſters conſent, accounting each term for the attornies fees, or making an annual allowance to ſuch maſter or ſuch other attorney in lieu thereof for the uſe of his name.

Their reſtraints.

No attorney can have more than four clerks at the ſame time in his diviſion either as practiſers in his name or under articles to him, nor ought the ſide-clerks to ſhift their diviſion without juſt cauſe for ſo doing, nor deſert the office for any conſiderable time, in which laſt caſe, they will loſe all right to practiſe by ſo doing, and will vacate their ſeat in the ſaid office.

The

The duty of the ſide-clerks, is (in the ſeveral cauſes wherein they are reſpectively imployed) to make out the ſeveral proceſs that iſſue out of the ſaid office, to enter all appearances, draw and ingroſs all declarations, iſſues, and other pleadings, neceſſary to bring ſuch cauſes to trial, judgment or other proper determination; and exemplify proceedings in the ſaid office, and inrol deeds and wills, and attend motions in court, trials at bar, and *niſi prius* in *London* and *Middleſex*, and references to the maſter, taxations of coſts, and putting in bail, and juſtifying the ſame either in court or at a baron's chambers. They proſecute writs of of error upon judgments obtained in the ſaid office, attend in the Exchequer chamber when the lord high chancellor and chief juſtices come there to give judgment on writs of error, and prepare the bills of coſts upon ſuch writs of error; and for the doing ſuch buſineſs, in the names of the reſpective attornies within whoſe diviſion they reſpectively act, (for the ſide-clerks cannot uſe their own names in any one act upon record) they are intitled to the ſame fees that the attornies are intitled to for ſuch buſineſs as they do, making an allowance to the attorney of their diviſion in reſpect thereof. Their duty. Their fees.

The bag-bearer of the office is appointed by the maſter to take care of the records, and to carry them to and from *Weſtminſter*, or where the buſineſs of the office requires, for which he hath his diſtinct fees hereafter ſet forth; and it appears that the office of bag-bearer hath ſubſiſted one hundred years and upwards. The Bag-bearer.

The

The names of the preſent maſter, attornies, and ſide-clerks, are as follow:

The names of the preſent maſter, attorney, and ſide-clerks.

Sir *Edward Walpole*, Knight of the Bath, chief clerk, prothonotary, or Maſter.

Fiſh Copinger, Eſq; his deputy.

Philip Burton, ſecondary, —

Elias White, — — — } The four attornies.

Edward Kinaſton, — — }

Rogers Jortin, — — —

In *Burton*'s diviſion { *Thomas Peake*, - / *William Martyn*, / *Joſhua Peart*, - - }

In *White*'s diviſion { *Francis Skyrme*, / *Abel Jenkins*, - / - - - / - - - } The ſixteen ſide clerks.

In *Kinaſton*'s diviſion { *Thomas Watſon*, / *Richard Edmunds*, / *John Philpot*, - / - - - }

In *Jortin*'s diviſion { *John James Chilton*, / - - - / - - - / - - - }

Of the ſeveral actions cognizable in the Office of Pleas.

Actions, what. *Actio nihil aliud eſt, quam jus proſequendi in judicio quod ſibi debetur.* Co. Lit. 285.

How divided. Actions are divided into criminal or civil; the latter of which come principally under our conſideration, and therefore we ſhall ſay little of the other.

Civil actions are again divided into real, perſonal, or mixed.

Namely, 1ſt, Real actions. Actions real or relating to lands becoming dilatory, and expenſive, by antient uſage, a more

more commodious method was contrived to diſpute the title to lands, which begun in the Reign of *Henry* the 7th, by forming a term for years, and bringing an ejectment for the leſſee to recover the term, and thereby to aſſert the title of the leſſor of the plaintiff. Ejectment.

Before this method was contrived, if a termor for years (who only claimed as a bailiff to the freeholder) had been ouſted of his poſſeſſion, he had only a remedy to recover damages in ejectment, and could not recover the term itſelf; but, in the Reign of *Henry* the 7th, the courts of Equity having obliged ſuch wrong doer to a ſpecific reſtitution, the courts of law have likewiſe given an *habere facias poſſeſſionem* to recover the term in ſpecie. *Fitz. Nat. Brev.* 220. *of Ejectment.*

Perſonal actions are founded on contract; as debt, which is to reſtore the thing *in numero*; or detinue or trover, which is to reſtore the ſame in ſpecie; or damages, where the thing in ſpecie cannot be had; alſo actions of account, covenant, *aſſumpſit*, and annuity. Perſonal actions are debt, detinue, trover, account, covenant, *aſſumpſit*, annuity.

Or founded upon force; as treſpaſſes *vi et armis*, or upon fraud, which are actions upon the caſe. Treſpaſſes and upon the caſe.

Therefore, if a man gets the goods or chattels of another by lawful means, as by bailment, borrowing, or pledging, he cannot have an action of treſpaſs, but muſt bring detinue, or trover, becauſe the party had not violated his poſſeſſion. What is detinue and trover.

So, where a man comes to buy goods, and they agree upon a price, and a day for the payment, and the buyer takes them away, no trover lies, but an *aſſumpſit* for the money; be- Wherein it muſt not be trover, but *aſſumpſit*.

cauſe the property was changed by a lawful bargain. *Bac. Abr. Actions in general* (A.)

Trover will not lie for money unleſs in a bag, &c.

An action of trover will not lie for money, unleſs in a bag or cheſt. *Sav. Rep.* 20.

Wheresn it muſt not be treſpaſs, but caſe.

I borrow a horſe to go to *Dover*, and go to other places, the owner may have an action upon the caſe againſt me for exceeding the purpoſes of the loan; for ſo far it is a ſecret and fallacious abuſe of his property, but no general action of treſpaſs, becauſe it is not an open and violent invaſion of it. 1 *Roll. Rep.* 128.

Criminal actions, namely, actions penal, what.

There are alſo actions penal which lie for ſome penalty or puniſhment in the party ſued, be it corporal or pecuniary. *Bract.*

Actions upon the ſtatute, what.

And alſo actions upon the ſtatute, brought upon the breach of any ſtatute, whereby an action is given which lay not before.

Action popular, what, and wherein it differs from others upon the ſtatute.

And alſo actions popular, given on the breach of ſome penal ſtatute, which every man hath a right to ſue, and becauſe this action is not given to one eſpecially, but generally to any that will proſecute, it is called action popular.

Theſe laſt actions may be ranked under that diviſion which is called criminal, and are properly brought in this office.

3dly, Actions mixed, what.

Action mixed, is an action that lieth as well for the thing demanded, as againſt the perſon that hath it, on which the thing is recovered, and likewiſe damages for the wrong ſuſtained; it ſeeks both the thing whereof a man is deprived, and a penalty for the unjuſt detention:

Detinue no mixed action.

But detinue is no action mixed, notwithſtanding the thing demanded and damages for withholding it be recovered, for it is an action merely

merely perſonal, brought only for goods and chattels. 8 *Rep.* 87.

Action of waſte, is a mixed action in the realty; the place waſted being to be recovered, and in the perſonalty; the treble damages being to be recovered. 1 *Inſt.* 284.

Action of waſte is mixed.

In *Mich.* 2 *Ric.* 3. an action of treſpaſs was brought in the exchequer for title of lands in *Kent, pro Banno quer' verſus* ——— as may be found frequently in more antient rolls.

Treſpaſs for title of lands in the antient rolls.

It was admitted by all the barons, in *Eaſter* 4 *Jac.* that if a copyholder ſurrender to the uſe of a younger ſon, and dies, this younger ſon cannot bring an action until admittance; but if the copyhold had deſcended to the heir, he may have an action before admittance: See *Cook's Copyhold Caſes, lib.* 4. *fo.* 22. and alſo it was ſaid, that all copyholders of the king's manors may now have admittance into their copyhold eſtates well enough, and the order for the ſtay of their admittances, which was made heretofore, is now diſſolved and quaſhed. *Lane's Rep. in Scac. fo.* 20.

Copyhold ſurrendred to the uſe of a younger ſon, he can have no action before admiſſion, but it is otherwiſe in deſcents to the heir at law.

Temporary actions are thoſe which are expreſly limited, and ſince the ſtature of limitations all actions ſeem to be temporary, or not ſo perpetual but they may in time be preſcribed againſt; a real action may be preſcribed againſt within five years on a fine levied, or recovery ſuffered. By *Stat. Hen.* 8. a writ of right for recovery of lands is to be brought within ſixty years; by 21 *Jac.* 1. writs of formedon for any title to lands *in eſſe*, are to be ſued within twenty years; actions in debt on the caſe, of account, detinue, trover, and treſpaſs, are to be brought within ſix years; of aſſault and battery within four years; and ſlander within

Actions temporary.

Statutes of limitations.

Hen. 8.

Rights ſaved in what caſes.

two years; but the right of action in theſe caſes is ſaved to infants, feme coverts, perſons beyond ſea, ideots, lunaticks, *&c.* and on a freſh promiſe the time limited may be inlarged; alſo the taking out and filing of a writ is a good bringing of an action to avoid the ſtatute of limitations. 1 *Lill.* 19.

Actions joint and ſeveral.

Some actions are joint or ſeveral; joint where ſeveral perſons are equally concerned; and the one cannot bring the action, or cannot be ſued without the other. Several in caſes of treſpaſs, *&c.* done, where perſons are to be ſeverally charged; and every treſpaſs committed by many is ſeveral. 2 *Leon.* 77.

Damages or wrongs, what.

There are three ſorts of damages or wrongs, either of which is a foundation for an action:

1. Where a man ſuffers damage in his fame and credit.

2. Where one has damage in his perſon, as by impriſonment, battery, *&c.* which reſpects his liberty.

3. Where a perſon ſuffers any damage in his property. *Carth. Rep.* 416.

Who cannot maintain actions;

A man attainted of treaſon or felony, convict of recuſancy, an outlaw, excommunicated perſon, convict of *præmunire*, an alien enemy, perſons in orders in the papal religion, ſuch as friars, monks, *&c.* cannot maintain an action till pardon, reverſal, abſolution, *&c.* though they may be ſued. But executors or adminiſtrators being outlawed, may ſue in the right of their teſtator or inteſtate, though not in their own right. A feme covert cannot ſue or be ſued without her huſband, (though the huſband may in ſeveral caſes maintain an action without his wife) except in *London*; where by the cuſtom a feme covert trading there may ſue, and be

except as executors or adminiſtrators.

be ſued as a feme ſole merchant. Infants are to ſue by guardian or next friend, *&c.* 1 *Inſt.* 128.

All real and mixed actions, ſuch as waſte *et ejectione firmæ*, are local, and muſt be laid in the county where the land lies; and actions of treſpaſs *quare clauſum fregit* muſt be laid in the county where the wrong was done. Local actions.

Actions upon the caſe, treſpaſs for goods, aſſault or impriſonment, debt, detinue, annuity, account, *&c.* are tranſitory, and may be laid in any county where the plaintiff pleaſeth, (except it be againſt officers of places, *&c.* by ſtatute 21 *Jac.* 1. 1 *Inſt.* 282. Tranſitory actions;

But becauſe treſpaſs, or trover for goods, battery, impriſonment, and ſlander, muſt needs be notorious in the county wherein they ariſe, the attorney knowingly laying them out of their proper county, unleſs they ariſe where the juſtices of *Niſi prius* ſeldom or never come, or ſuch like ſubſtantial reaſon, muſt ſubject himſelf to the cenſure of the court. Whereof ſome without good reaſon to the contrary ought to be made local.

If the cauſe of action ariſes in two counties, any action may be brought in either county; but if a nuſance be erected in one county to the damage of a man in another, the aſſize muſt be brought *in confinio comitatuum. Mich.* 8 *Ann. B. R.* Where the action ariſeth in two counties, it may be brought in either.

A bond made beyond ſea may be alledged to be made in any place in *England*, if it bear date in no place; but if there be a place, as *Bourdeaux* in *France*, then it muſt be alledged to be made *in quodam loco vocat' Bourdeaux in France*, in *Iſlington* in the county of *Middleſex*; and from thence ſhall the jury come. 1 *Inſt.* 261. If bond made in foreign parts, it muſt be alledged to be made *in quodam loco vocat' Bourdeaux* in *France*, in *Iſlington* in the county of *Middleſex*; that place muſt be alledged to be in *England*.

Of Infants.

Admiſſion by guardian.

Conceſſum eſt per theſ. & barones quod Willus. filius et hæres A. F. &c. infra ætatem exiſten' reſpond' Philip' reginæ Angliæ in plito debiti, per R. W. & T. H. conjunctim & diviſim coram cuſtodes ſuos, ſuper Warr' Attorn'. In Mich 35 Ed. 3.

Infant may ſue by his *prochein amie* or guardian, but muſt defend by guardian.

An infant may ſue by his next friend or guardian; becauſe the law ſuppoſes, where he ſues, it is for his benefit; but he muſt always defend by his guardian. a general admiſſion of a *prochein amie* is ſufficient, without a ſpecial aſſignment by the court. *Str.* 304.

Muſt not appear by attorney, and why.

An infant is not to appear by attorney in his own right; neither may he ſue or be ſued as executor, though joined with others by attorney, for the infant's diſability is adherent to his perſon; and the reaſon why the law will not allow of his proſecuting or defending his right by attorney is, that though the attorney ſhould act contrary to his warrant, he is not anſwerable for it; whereas, in ſuch caſe, the infant has his remedy againſt his guardian, and alſo becauſe the infant has no perſon by law to make an attorney. *Fitzgibbons, Rep.* 1. *Str.* 784.

Of changing the Venue.

Formerly actions were laid in any county;

In antient times the plaintiffs were uſed to lay their actions far from the place where the fact was done; by which the defendants were neceſſitated to carry their witneſſes into that county, how far ſoever remote from the place where the fact was done. To remedy this,

The

The *6 Ric.* 2. *cap.* 2. provides, " That to " the intent that writs of debt and of account, " and all other ſuch actions, be from hence- " forth taken in their counties, and directed " to the ſheriff of the county where the con- " tracts of the ſame actions did ariſe; it is or- " dained, that from thenceforth on pleas on ſuch " writs, when it ſhall be declared that the con- " tract thereof was made in another county " than is contained in the original writ, that " then incontinently the ſaid writ ſhall be aba- " ted."

but by ſtatute confined to the writ.

This was intended to have confined all actions to their proper counties; but as it would have created greater miſchief than it was intended to prevent, if a creditor could not follow his debtor into another county; and as the ſtatute is ſo worded, that it only preſcribes that the declaration ſhall agree with the writ, as to the place, the judges conſtrued it ſo as to impower them to change the venue, and thereby oblige the plaintiff to give evidence of the fact within the county where the writ is brought; and this in effect tends to abate the writ, according to the ſtatute. *Bacon, Actions.*

The conſtruction of the ſtatute enlarged by leave of the court to change the venue.

By the old rules, it is ordered, " That all " actions upon the caſe, treſpaſs for words, aſ- " ſault, impriſonment, ariſing in any *Engliſh* " county, ſhall be laid in their proper counties; " unleſs they ariſe in *Wales*, or a county where " juſtices of aſſize and *Niſi prius* ſeldom come."

Counties, except they ariſe in *Wales*, or where juſtices of aſſize ſeldom come.

" That ſuch actions ariſing in any county of " *Wales*, ſhall be laid in their proper counties, " or in the *Engliſh* county next adjoining there- " unto."

In *Wales* to be laid in the proper county, or next *Engliſh* county.

What affidavit neceſſary to change the venue.

In a tranſitory action, before the defendant has pleaded or obtained an order for time to plead, he may, on motion and affidavit made, That the plaintiff's cauſe of action (if any) aroſe in the county of *Norfolk*, and not in the county of *Cambridge*, (as laid in the declaration) or elſewhere out of the county of *Norfolk*, obtain a rule to change the venue to the proper county.

The courts give more countenance to this motion than heretofore, but they will not change the venue, where the plaintiff may be prejudiced by the change.

The ſeveral courts of *Weſtminſter-hall* have more frequently countenanced applications for changing venues of late years; but they will refuſe to change the venue from the county of *Middleſex*, or other county, to the county of the city of *York*, or other city or town, or from one city or town to another city or town, where it may occaſion delay, by the aſſizes being held but once a year in the county or city to which the venue is attempted to be charged; or where the plaintiff will undertake to give material evidence in the county or city wherein the venue is laid, or where the plaintiff can ſhew other good cauſe to the court that he may be prejudiced in his ſuit in the change, but not otherwiſe.

Venue never changed in debt.

Debt for rent laid in *London*, on a parol demiſe of lands in *Kent*, the court refuſed to change the venue, ſaying they never do it in debt. *Mich.* 4 *Geo.* 2. *Dupleſſis* againſt *Chalk*, *Str.* 878.

Not to be changed into a county palatine or in *ſcan. mag.* in *K. B.*

In an action of *ſcandalum magnatum*, the court refuſed to change the venue from *Middleſex* to *Cheſter*, becauſe it was to ſend it into a county palatine; and there was no inſtance of doing it in ſuch an action. *Trin.* 2 *Geo.* 2. Lady *Falconbridge* againſt *Forreſt*, *Str.* 807. Lord *Raym.* 1418.

The

The practice has always been otherwiſe in the court of exchequer, as to changing the venue into or from a county palatine, obſerving only the general rule, of not prejudicing the plaintiff in his ſuit.

otherwiſe in the exchequer as to counties palatine.

In *Mich.* 1741, *in ſccio.* it was ordered that the venue ſhould be changed from *Middleſex* into *Lancaſhire*, *Lutherbarrow* againſt *Valence*.

Changed from *Middleſex* to *Lancaſhire*.

In *Trin.* 21 *June* 1748, *in ſccio*' the venue was changed from to *Durham*, *Sutton* and another againſt *Peacock*.

From to *Durham* not to be changed to loſe an aſſize;

A declaration upon a policy was laid in *Lancaſhire*, and delivered here 8th *February*, I moved on an affidavit, that it was ſigned at *Briſtol*, and that the common affidavit to change the venue was ſent for, that we might have time; and the court inclined to have relieved us, if it had not appeared to ariſe in *Briſtol*, where there is no *Lent* aſſiſes: and they could not order it to an adjacent county without conſent of both ſides, though the defendant offered his conſent, to avoid delay. *Hil.* 16 *Geo.* 2. *Howarth* againſt *Willett*, *Str.* 1180.

Gardiner, Eſq; againſt *Thomas*, *Eaſter* 5 *Geo.* 3. 26 *April*, 1765, *in ſccio*', a rule was obtained to change the venue from the county of *Middleſex* to the city of *Briſtol*, until cauſe, it appearing to the court that the trial would not be delayed; but the plaintiff ſhewed for cauſe againſt the rule, that he was a barriſter; whereupon the rule was diſchargad.

but may from *Middleſex* to *Briſtol* if no aſſize loſt. but not where the defendant is a barriſter.

Burroughs againſt *Willis*, *Hil.* 2 *Geo.* 2. upon a motion to change the venue from *Middleſex*. It was inſiſted that the plaintiff was a maſter in chancery and a barriſter at law, and therefore had a privilege to lay his action in *Middleſex*; and a caſe was cited in *C. B. Hil.* 9 *Geo. Hicks* againſt

Defendant being a barriſter, &c. were refuſed to be changed, but a maſter in chancery is not ſo privileged.

againſt *Foot*, where it was ſo held; and the caſe of *Carter* and *Dormer*, in *C. B. Trin.* 13 *Geo.* and *Salk.* 668. and now, upon conſideration, the court refuſed to change the venue, but declared they did it on account of his being a barriſter, and not as a maſter in chancery. *Str.* 822.

Where an attorney is defendant, he may change the venue into *Middleſex*, as well as lay it there when plaintiff.

Wigley againſt *Morgan*, one, *&c. Trin.* 9 *Geo.* 2. the queſtion was, whether in an action againſt an attorney he had privilege to change the venue into *Middleſex*, as well as to lay it there when he is plaintiff; and the court held there was no difference. *Vide Salk.* 668. 2 *Show.* 176. 2 *Lill. Pract. Regiſt.* 370. 1 *Keb.* 277. 2 *Vent.* 47. The venue was changed into *Middleſex* in this caſe. *Str.* 1049.

An attorney cannot change the venue to *Middleſex*, where another defendant is joined with him.

Townſend againſt *Duppa*, *Mich.* 11 *Geo.* 1. an action of trover was laid in *Worceſterſhire*; and *Willes* moved to change the venue to *Middleſex*, becauſe the action againſt ſome of the defendants was as they were commiſſioners of bankruptcy; and they had privilege, as being barriſters or attornies: but the court refuſed it, ſaying the privilege could not take place where they are joined in an action with unprivileged perſons. *Str.* 610.

Venue not to be changed into a third county, without conſent.

The court refuſed to change the venue into *Durham*, the judges not going thither in the *Lent* circuit; whereupon the defendant offered to try it in *Yorkſhire*; but the plaintiff refuſing to conſent, the court ſaid they could do nothing in it. *Mich.* 18 *Geo.* 2. *Southouſe* againſt *Boak*, *Str.* 1216.

Venue not to be changed in *K. B.* where the cauſe of action ariſes in a *Welch* county.

Moore againſt *Fernyhouth*, in *K. B.* the venue was laid in *London*; and it was moved to change it into *Salop*, upon an affidavit that the cauſe of action aroſe in *Denbighſhire*, and *Salop* was the next

next adjacent *Engliſh* county: but the court ſaid it could not be done without conſent: and Mr. juſtice *Deniſon* ſaid it was denied to him. *Mich.* 8 *Geo.* 2. *Loyd* againſt *Williams*, Lord *Raym.* 1418.

Venue changed in *Scio.* from *London* to *Carmarthen*;

Noble againſt *Tindal* in the exchequer, 16 *Nov.* 24 *Geo.* 2. 1750. on motion of Mr. *Price* for defendant. It was ordered upon mature deliberation, that the venue ſhould be changed from *London* to the borough or *Carmarthen*, unleſs cauſe; and no cauſe was ſhewn againſt the rule.

and from *Brecon* to *Radnor.*

Hughes againſt *Burton*, *Trin.* 2 *Geo.* 2. 6 *July*, *in ſcio.* on the motion of Mr. *Clarke*, for the defendant. The court ordered the venue to be changed from *Brecon* to *Radnor*, unleſs cauſe; and no cauſe was ſhewn to the contrary.

Rule to change Venue muſt be moved for before plea, and motion to diſcharge the rule muſt be made before replication.

Dickinſon againſt *Fiſher*, *Hil.* 3 *Geo.* 2. It was held, that as the defendant muſt move to change the venue before plea pleaded; ſo the plaintiff muſt in like manner move to diſcharge the rule on undertaking to give material evidence before replication or plea. *Quære tamen* as to the plea, for the plaintiff may not have time; becauſe the defendant may give a plea at the ſame time he ſerves the rule to change the venue.

Rule to change venue diſcharged on plaintiff's undertaking to give evidence where venue is laid.

Hil. 1734, *Pain* againſt *Turton*, the rule to change the venue was diſcharged on plaintiff's undertaking to give material evidence in *Middleſex*, where the evidence was laid.

Plaintiff may change his own venue by order for leave to amend.

Though the plaintiff cannot regularly move to change the venue, yet he may in effect do it by moving to amend; and it was done ſo in the caſe of *Stroud* againſt *Tilly*, by ſtriking out *Dorſetſhire* and inſerting *Middleſex*. *Hil.* 15 *Geo.* 2. *Str.* 1162.

5 *Mod.*

Plea to the juriſdiction of the court is never ſworn, but a foreign plea is.

5 *Mod.* 335. *Chumley* againſt *Broom.* An action of debt was brought in *B. R.* and the plaintiff laid the venue in ſuch a place within the county palatine of *Cheſter*; which county was alſo in the margin of the declaration.

The defendant did not imparl, but pleaded by attorney that he is, and, at the time of the action brought, was reſident at the ſaid place within the ſaid county palatine of *Cheſter*, and ſo prayed judgment if the court of *B. R.* ought to hold plea of this matter.

But the plaintiff rejected this plea, becauſe it was not ſworn by the defendant (taking it to be a foreign plea) and therefore he ſigned judgment for want of a plea.

What is called a foreign plea.

Sed per Holt Chief Juſtice; A foreign plea is where the action is carried out of the county where it is laid, which in this caſe was not done; ſo that this is only a plea to the juriſdiction of the court, which is never ſworn; ſo the judgment was ſet aſide. *Style* 225. *Lit. Rep.* 236. 1 *Sid.* 330. 1 *Saund.* 97. 1 *Mod.* 81.

Of the Parties amenable to this Court, and the King's Power over the Debts of his Debtor.

The debtor of the King's debtor may ſue; and be ſued.

The debtor of the king's debtor may ſue here by *Quo minus.* 4 *Inſt.* 112.

The king's farmer (or debtor) may ſue one that detains from him part of the poſſeſſions that he hath from the king, out of which the farm is to be paid, by which he cannot pay his farm to the king. 1 *Rol. Abr.* 538. 2 *Inſt.* 551.

The king's debtor has the ſame privilege

In the caſe of Sir *John Williams* againſt *Liſter & al'*, reported in *Hardres* 475. it was held by chief baron *Hale* and the reſt of the court, That the

the king's debtor has the ſame privilege that the king has to ſue for his debt where he will.

Of ſuing where he will as the king hath.

Cum Gilbertus de Colceſtr. vinetar' regi tenetur in diverſis debitis ad quorum ſolutionem idem Gilbertus non ſufficeret niſi deba. in quibus diverſi debitores ipſius Gilberti eidem tenentur ei perſolvantur. Rex mandat baronibus quod omnes debitores ipſius Gilberti ſecundum legem & conſuetud' Sccii. diſtringantur ad deba. prædca. eidem Gilberto reddend' ut idem Gilbertus regi ſatisfaceret de debis. in quibus regi tenetur. Paſ. 52 Hen. 3. Ball's MS. 18.

Debtor of the king's debtor diſtrained for ſatisfying the debts due to the king.

Præcept' eſt executori debitoris regis defuncti, quod non recipiat aliquam pecun' de debis. prædicti defunct', ſed quod deba. illa quæ citius levari poterint ad Sccium. ſolvant, quouſque, &c. Et quod deferrent ad Sccium. oes. obligationes, & ſcripta de debit', &c. et præcept' eſt attorn' ipſorum executorum quod proſequantur bria' de Sccio. in noie. regis, & dict' executorum ad levand' deba. prædca. & quod proſpectetur eis pro labore ſuo, prout baron' videbitur. Mich. 25 Ed. 1. Ball's MS. 18.

The executor of the king's debtor inhibited from receiving the teſtator's debts and that they be proſecuted in the king's name.

Debt brought in the exchequer by *Quominus*, and counted upon bond as executor, and for that his writ ſuppoſed that he could not pay the queen what he is not paid by the defendant, and by intendment of law he could not pay and ſatisfy the queen with money which he recovered as executor; it was awarded that he ſhould take nothing by his writ. *Sav. Rep.* 39. *in Sccio. tempore Eliz.*

Plaintiff as executor muſt charge by his writ that he is not able to pay the king for the debts of the teſtator, or his writ will abate.

Injunctim eſt decano & capit'lo Lincoln quod de deb'is quæ debent executori P. quondam archioni Bucks, nihil ſolvant eiſdem antequam ſatisfaciant regi de decem Marcis quas idem P. regi debet. Mich. 21 Ed. 1. Ball's MS. 18.

A debtor injoined not to pay till the king is ſatisfied.

Mandat'

Sheriff commanded not to permit executor to adminiſter till the king is paid.

Mandat' eſt vic' Lincoln qd. non permittat exec' teſti Hugonis de Wake here. adminiſtrat' catal que fuer' predic. Hugonis donec ſatisfiat regi de debis quæ idem H. Regi debet niſi predei. exec. ſuffic' ſibi fecerint ſecuritat' de predcis. debit regi reddend. &c. Mich. 27 *Ed.* 3. Ball's MS. 18.

Falſe impriſonment againſt the under-ſheriff may be brought in the office of pleas.

An action of falſe impriſonment, or other action, may be brought againſt the under-ſheriff in the exchequer, though the ſheriff be the officer of the court, for the court takes notice of the under-ſheriff alſo. 1 *Rol. Abr.* 539.

The debtor of the king's debtor ſue here, and iſſue taken for the king.

The king brought action of debt in this court againſt a prior alien, and the prior had proceſs againſt *A.* who detained goods from him, without which he could not anſwer the king; *A.* came and claimed the goods as his tithes as parſon of *B.* and the prior claimed the tithes as parſon of *S.* and thereupon iſſue was taken for the king triable in the exchequer. 4 *Inſt.* 111. 38. *aſſ. pa.* 20.

Ejectment againſt the debtor of the king's debtor muſt be brought in the exchequer.

If *A.* is outlawed at the ſuit of *B.* and land in the poſſeſſion of *A.* be extended, and *C.* claims title to them, and pleads to the inquiſition; if *C.* will bring an ejectment for them it muſt be in this court, becauſe the king's revenue is concerned. *Hard.* 176. *Hamond's* caſe. 12 & 13 *Car.* 2. *in Sccio.*

Like ejectment removed from the common pleas.

If *A.* hath title to lands under an extent out of the exchequer for debts in aid, he muſt bring his ejectment for them in this court, and having brought his ejectment for them in the common pleas upon motion, he was ordered to proſecute here. *Hard.* 193.

This court hath power to hold any thing not reſtrained by ſtatute.

Information upon the ſtatute of 8 *Ed.* 4. *cap.* 2. of liveries, the queſtion was, if the action lies in the exchequer. The barons ſaid this

this is a ſuperior court, though not named in the ſtatute, and that the ſuit may be here, for there are no reſtrictive words in the ſtatute; and this court hath power to hold plea of any thing which doth concern the queen, if not reſtrained; *Adjournatur. Cro. El.* 326. *pl.* 3. *Paſ.* 36 *Eliz. B. R. Agard* againſt *Cavendiſh.* The barons afterwards gave judgment for the queen and informer. *Savil* 134. But upon a writ of error in the exchequer-chamber, the lord keeper *Egerton*, *Popham* and *Anderſon* chief juſtices were of opinion, that the judgment ought to be affirmed as to the queen's moiety, for ſhe might chuſe in what court ſhe would ſue; but it ought to be reverſed as to the informer's moiety. 2 *Anderſ.* 127. *Moor* 564. *Noy* 117.

But it appears by the record which is entred, *Hil.* 35 *Eliz. rot.* 177. that the writ of error was diſcontinued by the not coming of the lord keeper, lord treaſurer, or either of the chief juſtices on the day of adjournment to the exchequer-chamber, and that the record was remitted to the court of exchequer. See this caſe as reported by Sir *John Savile* hereafter, under Title *Informations.*

All his majeſty's ſubjects are his debtors, and as ſuch are equally privileged with the accountants to ſue, and are alſo equally liable to be ſued in the office of pleas. Every ſubject is the king's debtor.

The following determinations have ſet this matter out of doubt many years ſince.

11 *Richard* 2. *Bucks*, Thomas Chapman *unus pauperu' nativorum tenen' dni. regis de Wendover verſus Rogerum Skynner in plito tuſgr.—Deft. plitat' qd. quer' non eſt miniſter nec officiar' regis de Sccio. nec aliqua cauſa rationabilis eſt quare ipſe ſequeretur* Pleas to the juriſdiction of the court of exchequer over-ruled.

ſequeretur billam ſuam in Sccio. prædicto quod eſt in Com' Midd. de tanſgr' ſibi fact' in alio Com' videlt in Com' Bucks, in quo caſu idem quer' deb' proſequi ad communem legem et non in Sccio. & non intendit qd. cur' in hoc caſu aliquod pl'itum ſuper pred. billam velit tenere ad quod dictum eſt ei per Cur' qd. reſpondeat allegatione predict' non obſtan' et ſuper-inde defend. pl'itat. non cul'. Ball's MS. 46.

In an action of treſpaſs plea that the dec'on. makes no mention of plaintiff's be-

Will'us de Stapleton Quer' verſus Jo. de la Moore in detinue Def. dic' qd. quer' non eſt miniſter dicti regis nec def. nec querela predca. fac' mentionem qd. idem quer' eſt debitor d'ni regis et pet' judic', &c. et dictum eſt ei qd. ulterius reſpond' Et ſuper hoc def. dic' qd. coia. pl'ita non debent coram Theſ. & Baron' terminari nec pl'itari & ex quo pl'itum pred. eſt pl'itum coe. de natura detenc' cuſtodie pet. jud'um, &c. et dictum eſt ei qd. reſpond. allegac' illa non obſtan' & poſtea def. plitat. in bar' actionis & jud'um pro quer. Paſ. 48 Ed. 3. Ball's MS. 46.

debitor d'ni regis, whereupon defendant is directed to anſwer the allegation notwithſtanding, and thereupon defendant pleads in bar, and judgment is given for plaintiff.

In an action of debt the like plea over-ruled.

Action of debt for rent: The defendant pleaded *qd. cur' ſccij. de Materia in bri. et narr' ſpec' cognoſcere non debet, &c.* and demurrer joined thereupon; and judgment *qd. def. reſpond.* Prior of Walſingham *againſt* Pauch, Eaſter 8 Hen. 7. Ball's MS. 32.

Judgment affirmed in error where neither plaintiff nor defendant were privileged.

Woodruff againſt *Fiſher:* In debt by bond defendant pleads the covenant and ſtatute of uſury; the plaintiff replies ſpecially, to which defendant makes default, and judgment is ſigned for want of a rejoinder. Defendant hereupon brings a writ of error, and aſſigns for error that neither the plaintiff nor defendant had any privilege in the exchequer to plead or be impleaded, nor any matter of privilege appearing in the record, to which the defendant

defendant in error pleads *in nullo eſt erratum*; whereupon after divers continuances and adjournments, the judgment was affirmed for the plaintiff by the lord keeper, lord treaſurer, the chief juſtices and other aſſociates. *Eaſter* 17 *Eliz. in Sccio. Ball's MS.* 19.

Knollys, Eſq; againſt *Cator*: In *ejectione firmæ in ſccio.* the plaintiff declares without any privilege of *debitor d'ni regis*, or otherwiſe; and upon a ſpecial plea the plaintiff replies ſpecially; the defendant demurs in law, and after divers arguments on the demurrer judgment for the plaintiff. The defendant brings a writ of error, and aſſigns for error, that neither the plaintiff nor the defendant had any privilege in the exchequer; whereupon after divers adjournments and arguments the judgment was affirmed. In *Roll. Trin.* 24 *Eliz. Berks vide* tranſcript of the record.

Debitor d'ni regis not neceſſary.

Among the multitude of ſuits brought in the earlieſt times between party and party, without any privilege or diſtinction of any kind on either ſide, are the following cauſes. In *Hil.* 14 *Hen.* 8. *Mynors* againſt *Cutt*, *Devill* againſt *Chantrell*, *Haſtings* againſt *Stanbynorth. Hil.* 1 *Ed.* 6. *Penyngs* againſt *Finkell*, *Highgate* againſt *Garrett. Trin.* 2 *Ed.* 6. *Payne* againſt *Jones. Paſ.* 7 *Ed.* 6. *Whettonſtill* againſt *Atteſmore*, *Rutter* againſt *Underhill*, *Henriſon* againſt *Lancaſter. Hil.* 13 *Eliz. Hodgſon* againſt *Knyvet.* Judgment for the plaintiff.

In *Roll*, *Eaſter* 1 & 2 *Ph. & M.* between *Kirkham* plaintiff and *Taverner* defendant, the plaintiff declares generally *debitor d'ni regis* which is the firſt ſays *Ball* (in his *Manuſcript* 33.) that I have found of this ſort; but within a

Debitor d'ni. regis when firſt uſed.

page or two after he has an extract from the records, as follow:

Eſſex, actio port per Galfr'um Swinborne debitorem d'ni regis verſus Ka. Cooke vid. in pl'ito tranſgr' unde jud'm' pro quer' et dampna ad 100 *Marcas & quer' dat inde cl'ico pl'itorum & cl'icis ſuis* 40 *s. Hil.* 12 *Ed.* 4.

And damages out of which plaintiff gives a part to the clerk of the pleas and his clerks.

No ſuch diſtinction as *debitor d'ni regis* appears in the more antient records; but in *Mich.* 17 *Ed.* 3. between *Glouc'* and *Brookſworth*, in treſpaſs, the judgment is for 58 *l.* damages, & *quer' dat clericis bris'* 100 *s.* and 15 *ſci. Mich. eodem anno in Hertf. jud'm' dat' pro* 20 *Marcis dampn' & quer' dat cl'icis br'ium.* 40 *s. inde.*

An amerciament for a by-law upon the king's tenant, he muſt bring his action in the office of pleas in the exchequer;

In *Sccio. Trin.* 7 *James*, *Lane's Rep.* 55. it was moved for the king upon a leaſe holden for him, that *J. S.* was amerced 10 *l.* becauſe he received a poor man to be his tenant, who was chargeable to the pariſh, contrary to a pain made by the townſhip, and thereupon proceſs iſſued out of this court, and the bailiff diſtrained, and *J. S.* brought treſpaſs; and it was ſaid by the barons, and ordered, that if *J. S.* will bring an action for the diſtraining, for this amerciament be it lawfully impoſed or not, yet *J. S.* ſhall be reſtrained to ſue in any other court, but in this; and here he ſhall ſue in the office of pleas, if he will, for the bailiff levied it as an officer of this court, and for the matter *Snigg* ſaid, that if *J. S.* received a poor man into his houſe, againſt a by-law made in the townſhip, there is good cauſe of amerciament; but by *Tanfield* it is nothing to us, that they have a cuſtom to make by-laws herein againſt a by-law made by us; alſo a leet of itſelf hath no authority to make by-laws, or ſuch an order, but by cuſtom it is good. *Snigg* and *Altham* barons:

the bailiff alſo acted as an officer of the court.

barons: It is good policy to make an order with a pain in a leet, that no perſon ſhall receive any ſuch tenant as ſhall be chargeable to the pariſh; but clearly the ſteward cannot amerce one for ſuch a cauſe without an order with a pain made before. See alſo *Rol. Abr.* 539.

Where the king is patron of the vicarage, a diſpute of tithes between parſon and vicar ought to be in the exchequer by bill or action.

J. S. was parſon of *D.* as appropriate, and *A.* is vicar, and the king is patron of the ſaid vicarage, and debate was between the parſon and the vicar; this ſuit ought to be in the exchequer for theſe tithes; and by the court it may be commenced accordingly by Engliſh bill in the exchequer, or by action in the office of pleas, for it is apparent that the king is ſupreme ordinary. This was *Paſch.* 9 *Jacobi*, *Lane's Rep. anonymous in ſcio.* 100.

Pending an action in the office of pleas of the exchequer; action commenced in king's bench for the ſame cauſe, a contempt of the court of exchequer.

One *J. S.* brought action of debt in the exchequer in the office of pleas there, and pending that action he commenced an action in the queen's bench againſt the ſame party, for the ſame cauſe, and the party defendant prayed an attachment againſt the plaintiff.

Shute 2d baron: It ſeems to me that we ought to ſtay the ſuit, but not award an attachment, there being no contempt.

Manwood: Certainly it is a contempt; and it is the common uſage in the common pleas. *Fanſhaw*, the queen's remembrancer ſaid, that he could ſhew precedents that it is a contempt; but when a plea is removed out of an inferior court by writ of privilege, and the party plaintiff in the inferior court counts in the queen's bench; that is no contempt, that is a liberty

to ſue where he pleaſes. *Savile in Sccio.* 14 *Eaſt.* 23 *Eliz.*

Action removed from the common pleas into the exchequer, tho' plaintiffs title under an extent was extinguiſhed, and the crown leaſes determined.

Sir *Ralph Banks* againſt Sir *Thomas Bennet & al'*, *Trin.* 13 *Car.* 2. *in Sccio.* Upon an ejectment brought in the court of common pleas by the defendant here, the plaintiff moved that the action might be laid here, becauſe his title was under an extent out of this court for debts in aid. To which it was anſwered, that all thoſe debts were pardoned by the act of general pardon, and ſo the extents at an end; and that the leaſes of thoſe lands under the ſeal of the exchequer rendring rent were determined alſo; being only *quamdiu in manibus noſtris*; yet the court ordered the parties to proſecute their ſuit here, becauſe this could not appear but upon examination of the whole matter. *Hard.* 193.

Officer of cuſtoms ſeizes two cables, one whereof is only foreign, the court refuſed to remove the action of treſpaſs from *B. R.*

Barkley & al. againſt *Waters*, *Mich.* 1731. *Nov.* 6. *in Sccio.* A cuſtomhouſe officer ſeized two cables on board a ſhip after ſhe was cleared, and brought them on ſhore, being not reported; one of them was a foreign cable, and ſo forfeited by the ſtat. 5 *Geo.* 1. *c.* the other he would have brought back again to the ſhip, but the maſter refuſed to receive it, unleſs he could have them both.

The owners of the ſhip brought an action of treſpaſs againſt the officer for taking fifty thouſand pounds weight of ropes and cordage in *B. R.* ſo I this day moved to remove the action into this court, the defendant being an officer of the revenue, acting in the execution of his office, and the foreign cable being actually condemned in this court.

But it not appearing but that the action was brought in *B. R.* for the other cable only, the court denied the motion. *Bunb.* 306.

In caſes where actions are brought againſt accountants (preſent in court as aforeſaid) in the other courts of *Weſtminſter-hall*, by application to this court upon affidavit the cauſes have always been and ſtill continue to be removed into the office of pleas, and tried in the court of exchequer, in which court ſuch accountants are always privileged.

Accountants ſued in other courts, the actions may be removed from *K. B.* and *C. B.*

If an accountant in the exchequer be impleaded in the common pleas, the exchequer may ſend a *ſuperſedeas* to them to ſurceaſe. *Br. Superſedeas, pl.* 38. cites 9 *Ed.* 4. 57.

And proceedings may be ſuperſeded in the common pleas.

And if he be impleaded in the king's bench, thoſe of the exchequer will ſhew the accord of account, *&c.* for they cannot make *ſuperſedeas* to the king, for there the pleas are held *coram rege*, and not *coram juſticiariis*, and he ſhall be diſmiſſed. *Ibid.*

But not in the king's bench.

Bereholl againſt *Candy*, *Hil.* 1718. 31 *Jan. in Sccio. Candy* an officer, ſeized coffee on board a ſhip, as if it was intended to be relanded contrary to the condition of the owner's bond; he alſo ſeized the ſhip, and carried her to a place where he could conveniently ſearch her in the preſence of witneſſes: The owner of the coffee brought an action againſt him *in Banco Regis* for this ſeizure; but this action was removed upon motion as uſual, becauſe an information was actually filed for the coffee; but an action being brought *in Communi Banco* againſt *Candy* by the owner of the ſhip, it was alſo moved to remove this action, but oppoſed by the plaintiff; becauſe there was no information for the ſhip, and therefore not within the rule; but by the opinion of the court, officers belonging to the revenue ought to be ſued here for what they do in the execution of their offices; and

Officers of the revenue ought to be ſued in the exchequer for what they do in the execution of their office;

and the court will remove an action commenced in *C. B.* againſt an officer for ſeizure of a ſhip, though no information for the ſhip be yet filed here.

although no information for the ſhip be filed, yet a ſeizure is not examinable in another court; and in the action below, the ſtopping and ſeizing muſt be given in evidence, and therefore we will remove the action. *Bunb.* 34.

Fines and impriſonments by the commiſſioners of the exciſe do not immediately concern the revenue, and therefore an action for the falſe impriſonment is not removable from the other courts into the exchequer.

Biſhop againſt *Warner* and others, *Trin.* 13 *Car.* 2. *in Scccio.* The commiſſioners of exciſe fined the plaintiff being a brewer according to the new act in 20 *l.* for not paying the duty of exciſe; and upon a return made that he had no goods, whereof a diſtreſs could be taken, they impriſoned him; whereupon he brought an action of falſe impriſonment in the court of king's bench; and the defendants prayed that the action might be laid here, becauſe the cauſe concerns the king's revenue; *ſed non allocatur per curiam*, becauſe this fine does not immediately concern the revenue of exciſe, but is a penalty impoſed for an offence committed in it; and it belongs no more to this court than other like caſes ariſing upon fines and impriſonments; otherwiſe, if it had immediately concerned the king's revenue. *Hard.* 193.

Trover againſt a cuſtomhouſe officer removed from *C. B.*

Penny againſt *Baily*, *Mich.* 1731. *Nov.* 17. Trover was brought in the common pleas againſt a cuſtomhouſe officer for a quantity of tea and other goods; and in the declaration the plaintiff threw in a great coat, ſaddle, whip and ſpurs.

Now it was moved by Mr. Solicitor general to remove the action into this court, upon an affidavit that the tea and other goods ſeiſed were actually condemned, and that the defendant had not ſeized the great coat, *&c.* and they were only thrown in to give a colour to his action there; the plaintiff not coming to ſhew any cauſe why the action ſhould not be removed,

moved, the rule was made abſolute. *Bunb.* 309.

Wikes againſt —— 7 *James in Scio. Lane's Rep.* 54. In the exchequer-chamber by Engliſh bill this caſe was depending, and argued before all the barons at *Serjeants Inn* in *Fleetſtreet*, *viz.* the king exhibited an information againſt *Wikes* for entring into divers parcels of land, and *Wikes* pretending that he had good equity prayed his relief by Engliſh bill, in the exchequer chamber, and the caſe upon the ſaid bill was this: *Graunt* made a leaſe for years to one *Somerfield* and *John Wintor* in truſt, and for the benefit of the wife and children of the leſſor for rendring rent, and after *Wintor* one of the leſſees, and alſo *Graunt* who was the leſſor, were attainted of the gunpowder treaſon; and *Wikes* married the wife of the leſſor, and entred, and upon this information he prayed relief in behalf of his wife and children by this Engliſh bill: And firſt, it was agreed by all the barons, that the king by the courſe of the common law had the moiety of the land, and no more, by the attainder of *Wintor*, and that *Somerfield* the other leſſee, ſhall be tenant in common with the king; but what remedy he ſhould have if the king took all the profits they agreed not, (as to the other points ſee the report); but as to the bill exhibited by *Wikes* it prayed nothing but one moiety of the term, *viz.* that which in law belongs to *Somerfield*, which moiety by the common law we (the court) cannot take from him, and therefore we will leave you to ſue in the office of pleas, according to the courſe of the common law in the name of *Somerfield*; and therefore they gave no reſolution, if by equity the huſband ſhall forfeit a truſt

A leaſe for years to two perſons, in truſt for the benefit of the leſſor, his wife and children; the leſſor and one of the truſtees were attainted, and one *Wikes* married the leſſor's wife, and entred on the leaſed premiſſes; by the attainder of one of the truſtees, a moiety of the land becomes forfeited to the king, and *Somerfield* muſt ſue in the office of pleas for the other moiety.

which he had for years in the right of his wife.

For and againſt all accountants preſent in court upon their accounts.

Many of the actions antiently commenced were by bill for and againſt accountants, ſuch as are preſent in court upon their accounts, namely ſheriffs, eſcheators, bailiffs of liberties, collectors, receivers, *&c.* all which were privileged and protected by the court, as being upon their accounts, and which ſtill continue ſo privileged and protected; and in caſe ſuch defendants, having notice of the bill being filed, do not plead thereto, according to the rules for pleading hereafter ſet forth, a judgment of *nil dicit* may be ſigned againſt them, but no forejudger can be obtained as in the court of common pleas; and the reaſon given is, becauſe the king's ſervice might be prejudiced by forejudging his officers.

Such as,

There are very many of theſe actions might be ſelected from the records; among which are as follows:

Proviſor victualium.

In 35 *Edw.* 3. action was brought by *Robert Monk, nuper proviſorem victual. hoſpitii regis,* againſt *William de Hereford,* in a plea of debt.

For the queen's clerk.

In *Trin.* 37 *Edw.* 3. many writs for *Simon de Schrouteby clico. Phe. regine Angl. conſortis n're chariſſimæ ſuper filac' briu'.*

For the late bailiffs of Wincheſter.

In *Mich.* 6 *Hen.* 4. *Southampton*; Action brought by *Jo. Lake* againſt *Jo. Snell* and *Jo. French nuper balli'os civitat' Winton' preſent' in cur' eodem die in propria perſona ſua ſuper comp'um ſuum de diverſis debis. que levaver' ad uſum opus dni. regis nunc infra libertat' civitat' prædict'.*

Againſt the keeper of the privy ſeal.

In *Trin.* 31 *Hen.* 6. action brought by *Thomas Lyſeny,* dean of St. *Paul*'s, *London, verſus cuſtodem privati ſigilli dni. regis.*

On

On the ſame roll action was brought *per William Cotton, cuſtodem Garderobe.* — For the keeper of the wardrobe.

In *Hil.* 18 *Hen.* 6. action brought *per Thom. Thorpe, ſumonitorem hujus Sccii.* — For the ſummoner of the exchequer.

In 33 *Hen.* 6. action brought by *Burton* verſus *Foldhay attorn', Forteſcue nuper vic' Devon' præſent', &c. ſuper comp'm pro eodem nuper vic' reddend', &c.* the like action in 12 *Edw.* 4. — Againſt the ſheriff's attorney.

In 1 *Edw.* 4. action brought againſt the receiver of the duchy of *Cornwall.* — Againſt the receiver of the duchy of Cornwall.

By *Niſi prius* upon the file of writs of the ſame year, actions brought by *Thomas Deyncourt*, Eſq; verſus *Thom. Weſt ar' nuper clicum. mercati hoſpicii Henr. nuper defco. & non de jure regis Angl. ſexti præſent. hic in cur' eodem die, ſuper comp'm ſuum de officio ſuo prædco. hic ad hoc Sccium. reddend. per* Tho. Harriſon *attorn' ſuum.* — Againſt the clerk of the market of the late king's houſhold.

Upon the file of writs of *Mich.* 1 *Edw.* 4. *Bre. pro Waltero Ammener firmar' Cambii infra regnum n'rum Angl. & villam n'ram Cales cum quo minus.* — Farmer of the Exchange within England and the town of Cales.

Upon the file of writs of *Trin.* 2 *Edw.* 4. writ of *Quo minus pro Elia. Upton clico. pacis, coram Nicho. Aſheton & ſociis ſuis nuper juſtic' ad pacem n'ram in com' Cornub' conſervand' aſſign'.* — For the clerk of the peace.

The like *pro Humfro Bourhoheir mil. d'no de Cromwell, uno Camerar' de recept' ſccii.* on the ſame file. — For one of the chamberlains of the receipt of the excheq.

In 4 *Edw.* 4. *verſus collector' decimæ a Claro conceſſ.* — For the collector of tenths

Upon the file of writs of *Mich.* 5 *Ed.* 4. *Bre. pro Tho. Kent ſecondar' in officio privati ſigilli dni. regis ac clicus. de concilio ejuſdem dni. regis.* — For the clerk of the council.

Upon

Chief baker of England. Upon the ſame file writ of *Quo minus pro Johe. Wenlok dno. de Wenlok mil. capitali Pincerna d'ni regis Angl' in plito. debiti.*

For the ſergeant at arms. The like writ on the ſame file *pro Robto. Spalding uno ſervien' d'ni regis ad arma abſque Quo minus.*

For the king at arms. The like writ on the ſame file *pro Johe. Sniers, principal' heraldo n'ro & rege armorum de Garter'.*

For the ſervant of the chief uſher, who was a woman. The like writ on the ſame file *pro Hugone Franceys ſervien' Agnetis Billeſby hoſtiar' de ſcio. n'ro.*

For the treaſurer of the houſhold. The like writ on the ſame file *pro Johe. Fogg mil. theſ' hoſpitii n'ri.*

For the farmer of ſubſidies, &c. The like on the ſame file, *cum quo pro Johe. Bolton firmar' n'ro ſubſid' & ulnag' pannorum venaliu' in com' Suff.*

For the clerk of the parcels. The like on the ſame file *pro Edo. Bohun clico. Johis. Morgan unius clicorum. parcellarum de ſcio. n'ro.*

Factor of bows. The like on the ſame file *pro Willo. Scotton, factore arcuu' n'rorum.*

Clerk of the crown. The like on the ſame file *pro Johe. Aſh, uno valectorum n'rorum de corona.*

Againſt clerk of the parcels. Actions brought the ſame year againſt the clerk of the parcels.

Againſt attorney of late ſheriff. ——— Againſt the attorney of the late ſheriff.

Againſt clerk of the market. ——— Againſt the clerk of the market.

Verſus appruatores ſubſ. In 7 *Edw.* 4. action brought for *Jo. Say*, Knight, *verſus appruatores ſubſ. & ulnag' pannorum venaliu' in com' Wilts ac in civitate Novæ Sarum, & in ſuburb. ejuſdem civit' ac medietat' foriſ-*

forisfactur' eorundem præsent' in cur' super comp'um suum de officio suo ad scium. reddend'.

Action brought *versus Eliz. Venour, custod' prisone dni. regis, nunc de Fleet*; same year. Against the warden of the Fleet.

Action brought by *Tho. Thomas* versus *Ro. Rockley nuper escaetorum dni. regis in com' Devon. presentat' hic in cur' eodem die super comp'um suum de officio suo escaetrie prædict' hic ad hoc sccium. reddend'*; same year. Against escheator.

Action brought for *Elizabeth Cantlowe* versus *Thomas Stratton ar clicum. operationum dni. regis nunc præsent' in cur' super comp'um suum de officio suo prædco' hic ad hoc sccium. reddend'.* Against the clerk of the works.

Action brought by *Nich. Sharp* versus *Radu. Wolsley ar' recepterem emptorem provisorem, & custod' omn. victual. stuffurarum dni. regis in villa sua & March Cales præsent' super comp. offic'*; same year. Against the proveditor of provisions in the marches of Wales.

Action brought by *Stratton* versus *Abbatem de Cirenceſter præsent' in cur' super comp'um suum de diverſ. debis. dno. regi nunc levabilibus infra libertat' ejusdem abbis. in com' Glouc' hic ad hoc sccium. reddend'*; same year. Against the bailiff of a liberty.

Action brought by *Robert Leys* versus *Jo. Harnell nuper majorem & escaetorem dni. regis, nunc in civitat' Cantuar' præsent' super compum' de officio suo*; same year. Against the mayor and escheator.

Action brought by *Margaret* Lady *Plantagenet*, the king's sister *versus abbm' de sco' Edo. de Bury præsent' in cur' super visum comp' sui de diversis debis. dno. regi nunc levabil' infra libertat' suam hic ad hoc sccium. reddend'*; same year. Against bailiff of a liberty.

The like *versus Archiep'um Cant.* same year.

Action brought *versus W. Haydock nuper unum collectorum custum' & subsid' dni. regis in portu villæ Sandwici, & in singulis portubus & locis eidem portus adjacen' præsent', &c. super compum'* Against the collector of the customs.

compum' de officio ſuo collect' prædict' hic ad hoc ſccium. reddend'; ſame year.

Againſt the under ſheriff.

Action brought by *Jo. Fletcher* verſ. *Jo. Benge, nuper ſubvic' Willi' Cheyne ar' nuper vic' com' Surr' & Suſſex ac attorn' ejuſdem nuper vic' præſent' in cur' eodem die ut attorn' dci. nuper vic' ſuper comp'um ipſius nuper vic' de officio ſuo vic' eorundem com' hic ad hoc ſccium. reddend' in propria perſona ſua*; ſame year.

By the comptroller of the works.

Action brought *per Joh. Kendale Contrarotlatorem operationum dni. regis nunc infra regnum Angliæ*; ſame year.

Againſt ſheriff.

In *Trin.* 8 *Edw.* 4. action brought *per Tho. Bayen' de cancellar' dni. regis, ſubc'icum parliamenti* verſus *Tho. Vaughan vic' Surr' & Suſſex præſent' in cur' ſuper comp'um.*

Againſt the gentlemen of the queen's robes.

In *Trin.* 17 *Edw.* 4. action brought by *Aſhfield* verſus *Johem. Chamber unum valectorum robarum dne' Eliz. Reginæ Angl. præſent' in cur' in propria perſona.*

Againſt the attorney of the mayor and eſcheator of London.

In *Mich.* 17 *Ed.* 4. action brought by *Burton* verſus *Sampſon attorn' majoris & eſcaetoris civitat' London præſent', &c. ſuper comp'm ipſius majoris, &c. in propria perſona.*

Againſt the clerk of the works and the ſheriff.

In 1 *Rich.* 3. action brought againſt the clerk of the works, and the like againſt the ſheriff.

For an informer.

In *Hil.* 13 *Eliz.* action brought *per Jacobum Langrake unum informatorum dnæ. reginæ ſuper forisfact' ſtatut. penal'* verſus *Ric'um Knowles.*

Accountant departing without anſwering, attached.

In *Mich.* 6 *Hen.* 4. the prior of *Cariſbrook* filed a bill againſt the bailiffs of *Southampton*, being preſent upon their accounts, and demanded that they ſhould anſwer to his bill *juxta antiquam conſuetud' ſccii'*, and becauſe they departed without anſwer, an attachment was awarded *ad fac' finem cum dno. rege pro contemp-*

tu

tu & ad reſpondend' quer' de contentis in billa. Ball's MS. 20.

Whatever belongs to the juriſdiction of the duchy court may well be determined in the court of exchequer, notwithſtanding that the duchy court is in being. *Per Cur'. Hardr.* 171. *Trin.* 12 *Car.* 2. *in Scaccario, Fleetwood* againſt *Pool.*

Duchy buſineſs may be determined in the exchequer.

Of the Privileges of the Office of Pleas, as a Branch of the Court of Exchequer.

It appears by Mr. *Madox, cap.* 20. *ſect.* 7. That from the moſt antient times, the perſons employed in the king's ſecvice at his exchequer were wont to enjoy ſeveral privileges. The records, down to the end of king *John*, which relate to this ſubject, are not ſo clear and full as thoſe during the reigns of *Henry* the Third, *Edward* the Firſt, and *Edward* the Second. However, in the former period, the barons and officers of the exchequer had divers immunities allowed to them, *per libertatem ſedendi ad Scaccarium*, in reſpect to their attendance there; ſome of theſe caſes are mentioned by the dialogue. The records of the ſubſequent times ſpeak more diſtinctly: they mention the privilege of impleading and being impleaded in the exchequer only; freedom from toll for things bought for their own uſe; freedom from ſuit to county-courts, hundred-courts, *&c.* and other privileges.

Privileges of the perſons employed in the king's ſervice.

It is alſo to be underſtood, that ſeveral of the reſidents at the exchequer had privilege not only for themſelves, but alſo for their clerks and their

their men; and among many other inſtances is the following, namely.

The chamberlain of the exchequer privileged.

Amicia, counteſs of *Devon*', was ſummoned to appear in the exchequer, to anſwer to *Iſabel* counteſs of *Albemarle*, chamberlaineſs of the exchequer, for the iſſues of certain lands. Afterwards the king (*Henry* the Third) having commanded the barons to transfer into the common bench all plaints depending before them except ſuch as concerned the miniſters of the exchequer, the barons thereupon were about to transfer into the common bench, the plaints depending before them, between *Amicia* counteſs of *Devon* and *Iſabel* counteſs of *Albermarle*: but in regard the ſaid *Iſabel* was by her attorney conſtantly attending on the king's ſervice in the office of chamberlain of the exchequer, the king commands the barons to adjudge in the exchequer upon all plaints wherein ſhe was concerned, as according to right and uſage they ought to do. *Hil. Com. 56 Hen. 3. Rol. 5.*

The privileges of the officers in the exchequer, according to the Red Book.

The privilege of the lord treaſurer, chancellor, barons, chamberlains, and all other the officers, clerks and miniſters of the exchequer, contained in the Red Book, among many other matters appear as follows:

That from the day of their coming together, which is the opening of the exchequer, until their general receſſion (the ſealing day) they ſhall not be called to any other cauſes under any judges whatſoever, whether eccleſiaſtical or ſecular; and if any judgment or ſentence ſhould be given againſt them in that time, it ſhould be revoked and made void.

Accordingly, if any were ſued in any other court, he had a writ under the ſeal of the exchequer, directed either to the judge before

whom the ſuit was commenced, or to the party plaintiff *in forma ſequen'*.

None of the barons and miniſters of the court ought to be impleaded elſewhere.

Rex, &c. Quia ſecundum antiquam conſuetud. & aſſi'am ſccii. nulli baronum n'rorum ibid. per preceptum n'rum. reſiden' vel eorum qui in miniſterio ſuo pro feodis quæ de nobis tenent nobis ibm. deprovire & aſſidere tenentur impl'itari non debent vel alibi pl'itare quam in ipſo ſccio. n'ro. poſtquam ibm. ceperint reſidere, & comp'is vic' & balliorum n'rorum intendere ac qd. ſine dampno. nro. recedere non poſſunt.

By this writ the ſuit was ſtaid in that court, and the plaintiff at liberty to ſue in the exchequer, if he would, or—*Rex, &c. cum, &c. Vobis prohibemus ne humoi. plitum. aperto ſccio. nro. prædco teneat' contra dignitatem, &c.*

The like writ directed to the biſhop or other ſpiritual judge, if any ſentence of excommunication were demanded againſt any other officer or clerk while he did attend in the king's buſineſs, to command him to revoke the ſame.

Nor be elected to any offices.

The like to the ſtewards and bailiffs as well of the king's own courts of his honours and manors, as of other lords to be diſcharged of ſuits and ſervices for their lands, and not to be elected to any offices. See *Stat.* 9 *Ed.* 2.

Wives and ſervants intituled to their huſbands and maſters privilege.

In *Eaſter* 13 *Jac.* (*Roll.* 211.) A ſuit was proſecuted in the eccleſiaſtical court at *York*, againſt *Beatrice*, daughter and heir of *Robert Browne*, Eſq; who was married to *Michael Staunton*, one of the clerks in the king's remembrancer's office, ſuggeſting that the ſaid *Browne* had made a will, whereby he had given his lands from his daughter; *Staunton* moved the court for a prohibition, and it was objected that a prohibition ought not to be granted in that caſe, becauſe the ſuit was only againſt the wife,

wife, and for her inheritance, and he no party to it, which caſe was often debated in court by counſel on both ſides, and after many precedents ſhewed, *tam ex parte remem. regis quam ex parte clici. pl'itorum allegantur qd. barones clici. & miniſtri hujus cur' ac eorum uxores hentes. conjunctim cauſam actionis poterint impl'itare tam in hoc ſccio. quam in camera ſccij. & qd. non debent alibi impl'itare nec in pl'itum trahi pro terris & catallis ſuis & ſuper inde petiit prohibitionem & ei conceditur & in officio pl'itorum preſideri allegat' fuit, viz.*

Precedents in ſupport of ſuch privilege in the wife and ſervant.

Paſ. 11 *Ric.* 2. *Newport* (ſervant of *W. Ford*, one of the barons) and *Margaret* his wife, againſt *Horſeman*, in debt *pro debo. prefat. Margarette dum ſola fuit.*

Trin. 4 *Hen.* 5. *Knap* againſt *Waryn.*

Mich. 7 *Hen.* 5. *Dixon*, clerk of the pipe, and two others, not having privilege againſt *Walter* the parſon of St. *Margaret Moiſes* in *London*, in treſpaſs.

Stephen Wolfe or *Walpley.*

Paſ. 12 *Ed.* 4. *Clarke ſecondar' baro. ſcii'* and two others, not having privilege againſt *Stephen Woolfe* or *Walpley* upon an attachment of privilege.

Paſch. 17 *Hen.* 7. *W. Milbourn*, executor of *Hugh Clopton*, late ſheriff of *London* and *Middleſex*, and *Margaret* his wife, executrix of *W. Hariott*, her late huſband, and *John Gerard* (filiol) of the ſaid *W. Hariott*, co-executor with the ſaid *Margaret*, brought their action of debt upon a bond to *W. Hariott* againſt *John Drayton* the obligor, *quo minus W. Milbourn ſatisfacere valet de debitis & compis.* only, and judgment thereupon for the plaintiff.

Trin.

Trin. 13 *Hen.* 8. *Jo. Caſtell*, clerk to *Denny*, *un' remem' ſcrij. & Fuller*, *vid.* executrix againſt *Childerne* in detinue.

Hil. 23 *Hen.* 8. *Pymme firmar' dni. regis in Wicomb Com' Bucks*, and *Elizabeth* his wife, executrix, againſt *Jones* in debt, *pro bonis empt' de teſtatore quo minus predcus. Thomas Pymme dno. regi ſatisfacere valet, &c.* defendant pleads *non detinet.*

Mich. 34 & 35 *Eliz. Clarke un' baron' & ux.* againſt *Oſborne*, the defendant anſwered.

Mich. 42. Same plaintiffs againſt *George* and others.

Paſ. 44. *Aſke*, Gent. ordinary ſervant to the lord treaſurer, and *Suſan* his wife, againſt *Payne* and wife. The defendants demurred upon the privilege denying the wife's privilege, but the demurrer was over-ruled, and the defendant ordered to anſwer and did anſwer.

Trin. 44. *Glover*, clerk to Sir *John Bingley*, auditor of the receipt, and *Blaunch* his wife, againſt *Bradſhaw* and others.

Hil. 7 *James.* Same plaintiff againſt *Watts*, knight; the defendant demurred for privilege and was over-ruled, and ordered to anſwer, and did anſwer in *Trin.* 9 *Jac.*

Mich. 9 *Jac. Corner*, one of the uſhers, and *Catherine* his wife, againſt *Battye.*

Hil. 17 *Car.* Sir *Simon Fanſhaw*'s caſe in *B. R.*

By the above precedents it appeared that wives and ſervants of the officers and clerks had their privileges in like caſes, and a prohibition was granted in *Eaſter* 13 *Jac.* 1. *Ro.* 211.

Other caſes wherein the wives of officers of the exchequer and ſtrangers have joined in the action, and have been allowed privilege.

In *Trin.* 14 *Hen.* 7. *W. Roch* one of the barons, and *M.* his wife, brought their action of debt by bond made to the feme only.

In *Paſ.* 16 *Hen.* 8. and *Mich.* 19 *Hen.* 8. Baron and feme executrix bring their action of debt for goods bought of the teſtator.

Haſelwood unus numeratorum & al' quer' in deb'o ſur privilege de Haſelwood tantum ibid.

In *Trin.* 31 *Hen.* 6. *Edolph civis London & Thorp unus baron' ſccij. port' actionem verſus Whalley ſuper privileg' baronis tantum in deb'o ſuper emiſſet in London.*

Information for a breach of the above privilege.

After the end of *Mich.* term 17 *Eliz. Philip Havard*, ſervant to Sir *Edward Saunders*, chief baron, was arreſted in *Fleetſtreet*, attending his maſter going into the country, at the ſuit of *Bird*; and in *Hil.* term following, the attorney general exhibited an information in the exchequer grounded on the privilege before mentioned againſt the plaintiff and bailiffs, for their contempt againſt the queen and her prerogative; to which *Bird* pleaded that he had a judgment at common law againſt *Havard*, and a writ of *Cap. ad ſatisfaciend.* whereby he arreſted, *&c.* and that the privilege ought not to be allowed in that caſe, whereupon the attorney demurred, and judgment was given againſt the defendant.

One of the meſſengers of the exchequer releaſed of an indictment for breach of the peace, upon an *habeas corpus* to the marſhalſea where he was impriſoned.

Hil. 11 *Hen.* 6. *John Cole* one of the meſſengers of the exchequer was indicted for a treſpaſs *quare vi & armis*, *&c.* and ſecurity of the peace prayed againſt him, for which cauſe he was impriſoned in the *Marſhalſea*; a writ of *habeas corpus cum cauſa* was directed to the ſteward and marſhal of the king's houſe, who returned the writ and brought in his body, whereupon he was bailed by the court of exchequer; and

and after divers continuances of his bailment the plaintiff releaſed the peace againſt him, and thereupon he was diſcharged.

Rex, &c. Cum tam ex dignitate regia quam ex conſuetudine antiqua ſcdm. eandem a tempore quo non extat memoria homin' uſitat' fuit obtent' qd. barones de ſccio. nro. reſiden' clici. et omnes alij miniſtri ibm. miniſtrantes ſive de clero ſive de regia cur' qui aſſident ex mandato ad alias quaſlibet cauſas extra ſccm. predict' ſub quibuſcunque judicibus & vero judice ſub quo lis mota fuit ſive ſit eccleſiaſtica ſive ſecular' non evocentur Et ſi forte vocat' fuerint rone. regie poteſtatis publica authoritate excuſantur & qd. iidem de quibuscunque co'ibus aſſijs ſect' comitat' hundred' & cur' quibuscunque tam de & pro denar' ſuis quam de & pro feodis ſuis acetian de murdris ſcutagijs vigilijs & dangeld nec non de quibuscunque proviſionibus ſive proviſor' & al. ſolutionibus noie. conſuetudinis pro quibuscunque victual. ſue domus in quibuscunque urbibus caſtellis & locis maritimis emptis ac de ſolutione alicujus Theolon. ſive voluet' liberi & quiet' eſſe debent & qd. non debent implitari. alibi qm. in ſccio. predco. qm. diu idem ſccum fuerit apertum in rubro libro de ſccio. See the ſame writ in *Dyer* 328. for the receiver general.

Writ of privilege for a clerk of the exchequer.

See *Mod. Caſ.* 205. and 1 *Lut.* 46. not neceſſary to plead it privilege but produce the red book upon the trial.

Barrington's caſe, *Hil.* 1659. *in Sccio.* One *Barrington* being ſued in the king's bench, pleaded his privilege as one of the auditors of the exchequer, and alledged in his plea that *omnes, &c.* omitting *& quilibet*, ought not to be ſued elſewhere than in the court of exchequer. And *Crompton* and *Levingſton*'s caſe was cited as a caſe in point in the court in 1655.

Not neceſſary to inſert in the writ of privilege that the defendant ought not to be ſued elſewhere.

where the defendant inſiſted upon his privilege in chancery as a clerk there; and was overruled, becauſe though *omnes* could not be ſued elſewhere, yet *aliquis* might: beſides he does not here aver his plea as he ought to have done, becauſe it is iſſuable, whether or no he be the ſame perſon who is auditor there; and to this opinion the court ſeemed to incline; but the plaintiff's counſel ſaid, that the precedents in the exchequer were without any ſuch averment, and they made a difference betwixt the officers or clerks of courts, who are upon record there, and their ſervants who are not: *Et adjornatur. Hard.* 164.

Writ of privilege granted to the deputy of the foreign oppoſer.

Harriſon's caſe in *Trin.* 1718. *June* 17. This day *Harriſon*, who was deputy to Mr. *Maſham* the foreign oppoſer, was allowed his writ of privilege to exempt him from ſerving the office of conſtable. *Bunb.* 24. See *Cro. Car.* 389. 1 *Lev.* 233. *Vaugh.* 155. 1 *Mod.* 22.

The like to the deputy of the uſher of the cuſtoms, but denied to the chief accountant to the commiſſioners of the navy.

Biſhop againſt *Loyd & al. Mich.* 1728. *Oct.* 23. *in Scio.* One *Martin*, who was deputy to Mr. *Taylor*, uſher of the cuſtoms, being choſen headborough for *Weſtham* in the county of *Eſſex*, moved for a writ of privilege to diſcharge him from that office, which was granted (at the ſide-bar *ut credo*) the 11 *July* 1728. upon the authority of which precedent I this day moved for a writ of privilege for the plaintiff, who was chief accountant to the commiſſioners for victualling the navy (and choſen churchwarden of the pariſh of *St. Botolph*, *Aldgate*, *London*,) his attendance on the king's buſineſs, and the revenue of the crown being equally concerned as in the other caſe; but the court thought this not like the other caſe, for it did not appear here that there was a clauſe of exemption in the patent conſtituting the commiſſioners of victualling,

victualling, as in the other caſe there was for all officers, &c. and the true reaſon they went upon in the other caſe was, for that all officers of the cuſtoms are bound to an attendance in this court, which in this caſe the party applying for this writ of privilege is not. *Bunb.* 255.

Searchers or ſuch like, unleſs upon their accounts queſtioned as to their privilege by bill in the exchequer.

Ayleway v. *Markham* the general ſearcher, *Mich.* 14 *Car.* 2. *in Scio.* In action upon the caſe by bill againſt the defendant as ſearcher for the profits of the office; judgment being ready to be entred up for the plaintiff for want of a plea; it ſeemed to *Hale* chief baron, and to the whole court, that a ſuit by bill does not lie but againſt thoſe officers who are obliged to a perſonal attendance in court, and not againſt others, ſuch as ſearchers, collectors, ſheriffs, or others, unleſs they be actually upon their accounts; for the miſchief would elſe be great, if ſearchers and others, whoſe preſence is neceſſary elſewhere upon their ſeveral charges and duties, ſhould be ſued here by bill, and compelled to anſwer, without being ſummoned, or have judgment againſt them by default; but becauſe the clerks ſaid there were many precedents for it in court, the barons appointed a day to be attended with precedents, and judgment ſtayed in the mean time. *Hard.* 317.

Writs of prohibition and *ſuperſedeas* were uſed to go for officers of the court impleaded elſewhere.

Writs of prohibition and *ſuperſedeas* were uſed to go, for officers of the court impleaded elſewhere, as may be ſeen in the red book, *fo.* 37.

Privilege againſt privilege how determined.

Sir *Geo. Carteret* againſt Sir *John Maſſam* in *Mich.* 14 *Car.* 2. *in Scio.* The plaintiff, as debtor to the king and treaſurer of the navy, exhibited his bill in the exchequer. The de-

fendant pleaded his privilege as one of the ſix clerks in chancery under the great ſeal; upon which caſe *Hale* chief baron, and the whole court held, that a general privilege as debtor will not hold againſt a ſpecial privilege in another court, but againſt a general privilege it will; but a privilege as accountant, will hold againſt a ſpecial privilege in another court, as officer of the court, or otherwiſe, though it be not alledged, that ſuch accountant is entred upon his account, becauſe that is intended if the contrary be not ſhewn, and every accountant may be attacht by the court to make his account. And in this caſe, they held that the plaintiff being treaſurer to the navy, was *eo ipſo* an accountant. *Hard.* 316.

Whether privilege after an imparlance.

Clapham againſt Sir *John Lenthall*, *Paſch.* 16 *Car.* 2. *in Sccio.* In debt upon an eſcape after execution, the defendant appeared, and *defendit vim & injuriam quando, &c.* and imparled ſpecially, ſaving to himſelf all advantages and exceptions, *quoad billam predictam*; and whether or no after ſuch an imparlance, he muſt be allowed his privilege, as marſhal of the king's bench, was now the queſtion. In this caſe it was held *per curiam*, that there are three ſorts of privileges in the exchequer; firſt as debtor, ſecondly as accountant, thirdly as officer of the court; againſt the firſt of theſe, any man who hath a ſpecial privilege in another court, as an officer of the court, or as an attorney, ſhall have his privilege; becauſe the privilege of a man as debtor, is only a general privilege, but if an accountant begins his ſuit here, no privilege ſhall be allowed elſewhere; becauſe an accountant has a ſpecial privilege, by reaſon of his attendance here to paſs his

The privilege of debtor only is general, but as accountant is ſpecial, and no other privilege ſhall be allowed againſt an accountant.

his account; and the king hath a particular concern in his attendance. The ſame holds in caſe of an officer of the court: If he commences a ſuit here, no privilege in another court ſhall prevail againſt him; becauſe his attendance here is requiſite and his privilege is attached firſt, by his commencing his ſuit; and herewith all the precedents agree. *Vide* 9 *Ed.* 4. 53. *per cur.* But if an accountant has finiſhed his account, and reduced it to a certainty, ſo that it is become a debt, he ſhall then have no other privilege than a general debtor has. So a ſervant to a miniſter or officer of the court, has no privilege againſt a privileged perſon elſewhere. The court held likewiſe, that after ſuch defence as aforeſaid, privilege may be allowed; for it is not a full defence, nor does he go about to ouſt the court of juriſdiction, but only claims his privilege. Likewiſe after a ſpecial imparlance *ſalvis omnibus advantagijs & exceptionibus*, a man ſhall have his privilege. But if the imparlance be ſpecial, *quoad billam, breve ſeu narrationem*, there it ſhall not be extended further; and after ſuch an imparlance privilege is not allowable, as appears 7 *Hen.* 6. 39. 22 *Hen.* 6. 7. 9 *Ed.* 4. 53. And when day is given before the court, it is called *dies datus*; when after it is called an imparlance. But upon the defendant's prayer it was adjourned. *Hard.* 365.

The ſame privilege prevails of an officer of the court as of an accountant.

But an accountant having finiſhed his account, and a ſervant to an officer or miniſter of the court, have no privilege againſt a privileged perſon elſewhere.

What is *dies datus*, and what an imparlance.

In *Hil.* 12 *Hen.* 4. *Johes. Ryver verſus Robtum. Coſyn computan. def. in plito. debi. def. het. ſp'iale ti'tlo & tunc tulit bre. de ſuperſed. extra cancellar' ratione privilegij de parliamento eo qd. ipſe fuit ſervien' un' militum Com' Surr' & Suſſex, Et ideo capi arreſtari aut impl'itari non deb. Et pet' allocat' bris. de ſuperſed. Quer' denegat privilegiu'* &

An accountant in court pleads privilege of parliament, but diſallowed with the advice of all the judges, & *nil dicit* ſigned.

& pet. judiciu. cur. Et ſuper hoc viſo & perl'co bri. pred'co per barones, &c. h'itoque aviſamento juſtic. d'ni regis de utroque Banco in hac parte quia videtur prefat. baronibus de adviſamento juſtic. predict. qd. t'lis h'etur & h'ebatur conſuetudo qd. magnates & milites Com' ac cives & burgenſes civitatum & burgorum ad Parliament. de ſumm. regia venien. ac eorum familiares ratione alicujus tranſgr. debi. compi. convenc' contract. cujuſcunque dum ſic in Parliamentis Regijs morentur capi aut arreſtari non debent ſed nullam hujuſmodi conſuetudinem fore quin impl'itari deb. prout in bri. illo ſupponitur Ideo conſideratum eſt per barones pred'cos qd. bre. illud diſallocetur et qd. predc'us Robertus Coſyn reſpond. prefat. Jo. Ryver ad billam ſuam pred'cam bri. predco. non obſtan. & poſtea jud'm ſuper nihil dicit. Ball's MS. 46.

The like plea diſallowed.

Si'le judicium ſuper conſili. brem' inter Barth. Dun quer' & Jo. Welſh ſervien' Comitis Eſſex Theſ. ſccii. qui impl'itat' fuit per billam preſent. in cur. In Mich. 12 Ed. 4.

A judge of the common pleas againſt the clerk of the hannaper in chancery. Plea to the jurisdiction overruled.

Thomas Young unus juſtic. d'ni regis de Co'i B'co verſus Jo. Daviſon cl'icum cuſtod. kanaperii cancellar. d'ni regis Def. in pl'ito debi. 103. *Def. protulit bre. de ſuperſedeas & pl'itat idem in bar' & nihilonimus iudicium intratur pro quer. & def. protulit bre. de error. & aſſign. errores Quer. moratur ſuperinde & poſtea quer. cogn. ſatisfactionem. Hil.* 9 Ed. 4. *rot.* 3. *ſi'lis proceſ. inter eaſdem partes eodem rot'lo.*

Mandat to an inferior court to ſtay ſuit againſt a miniſter reſiding in the exchequer.

Quia ſecdm' antiquam conſ. ſccii. reſiden. in eodem ſccio. & eorum miniſtri ib'm reſiden. quieti ſint de omnibus ſectis E. W. de Stelbings ſit miniſter reſidens in eodem ſccio. mandat' eſt Guidoni de R.

qua'tus

qua'tus de diſtrictione quam ei fac. occ'one ſecte ad hundred de Tendring ei pacem h'ere permittat. Trin. 40 Hen. 3.

Bre. de prerogativa pro clerico ſccii. direct. officiali ep'i Lincoln direct. de non permittend eum implacitari coram ipſo quia non deb. impl'itari alibi quam in ſccio. Trin. 53 Hen. 3.

A prerogative writ for a clerk of the exchequer to a biſhop to ſtay ſuit.

Mandat. eſt vic. Southt. qd. ve. fa. m'rum Rob'tum de Burthon officialem Winton 'epi ad reſpondend. regi quare poſtquam inhibit. fuit qd. ab executione ſentencie quam in Hugonem de B. cli'cum ſccii. &c. deſiſteret pred'cum Hugonem & al. interim denunciaret excommunicat. in regis contempt. & in ejuſdem lib'tat. & conſ. reſiden. in eodem ſciio. conſ. reſiden. in eodem ſccio. conceſſ. diſturbac. & grave dampnu. ipſius Hugonis, &c. Trin. 1 Ed. 1.

Inhibition to the official of the biſhop of *Wincheſter* for a clerk of the exchequer.

Mandat eſt vic. Warr. ſicut plur. qd. h'eat coram baronibus de ſccio. in cr'o a'iarum corpus prioris de Eaton ad reſpond. rad'o de Leic. cli'co de ſccio. de injuria ei illat' eo qd. extorſit theoloniu' a ſervien' ſuis in jundino de Eaton contra libertat. ſccii. Mich. 29 Hen. 3.

Mandate to the ſheriff to bring the defendant before the barons to anſwer a clerk of the exchequer for extorting from his ſervant.

Joh'es Perch cl'icus unius cl'icorum cancellar. d'ni regis quer' verſus Thomam Eckingham nuper vic' Com' Surr' & Suſſex, pro imbeſellando breve de attach. de privilegio verſus Willi'um Walker ad ſectam quer. 16 Ed. 4.

Againſt the ſheriff for imbezilling an attachment of privilege.

An action brought by *Crompton*, Eſq; againſt *Barrantyne*, Eſq; The defendant pleads the king's protection, and it is allowed by the court. *Eaſter* 5 *Hen.* 8.

The king's protection from actions pleaded and allowed.

Of

Of Conuſance.

Whether conuſance ſhould be allowed the vice-chancellor of *Oxford* for goods ſold to a ſcholar there by this court, in an action by *quo minus per debitorem d'ni regis*, venue laid in *London*.

Caſtle againſt *Litchfield*, *Paſch.* 21 *Car.* 2. *in Scio.* In an action upon the caſe, brought here and laid in *London*, upon an *indebitatus aſſumpſit* for money for tobacco. The univerſity of *Oxford* demanded conuſance of the cauſe, by reaſon of a charter granted to them by 14 *Hen.* 8. and confirmed in the 13th of *Eliz.* by act of parliament; whereby is given to them conuſance of all ſuits ariſing any where againſt any ſcholar, ſervant or miniſter of the univerſity, depending before the juſtices of the king's bench, common pleas, and others there mentioned, and before any other judge, though the matter concern the king; but the court of exchequer is not mentioned in the clauſe. But in the clauſe whereby are granted to them all fines, impoſed upon any of them in any court, there the court of exchequer is named; and the queſtion was, whether conuſance ſhould be allowed by this court in this action by *quo minus per debitorem d'ni regis?*

See *Bunb.* 13.

Crook pro quer': Conuſance lies not here; Firſt, becauſe the plaintiff is a privileged perſon here, and it is prejudicial to the king, that it ſhould be allowed; for the king may have the benefit of what is recovered here by his debtor, which advantage he would loſe if this demand of conuſances be allowed; and it appears 2 *Co. Inſt.* 114. and *Roll.* 489. that where two privileges concur, the firſt that attaches ſhall prevail. Secondly, the action is laid in *London*, and is a tranſitory action; and being laid there, it ſhall not be altered by a demand of conuſance, no more than in the caſe of a county palatine,

when an action tranſitory is laid elſewhere; as it was reſolved 10 *Car.* 1. *vi.* 3 *Hen.* 6. 30. Thirdly, it does not appear, that the conuſance in queſtion extends to this court, for this court is not named. *Vide* 8 *Hen.* 6. 18. And the words or other court will not include it, after the naming of other inferior courts: As in 2 *Rep.* archbiſhop of *Canterbury*'s caſe: Upon the ſame reaſon it has been reſolved, that a biſhop is not within the act of 13 *Eliz.* of leaſes made by ſpiritual men. And for authorities, he cited a caſe in 14 *Car.* 2. between *Shallcroft* and *Wilkins*; in which he ſaid it had been adjudged ſo in this court.

Holloway pro defendente cited 9 *Hen.* 6. 27. and ſaid the words, *aliis juſticiariis quibuſcunque*, did comprehend the barons of the exchequer; and by the like reaſon that conuſance ſhould be ouſted here, by the ſame reaſon all other officers of other courts, if ſued here, ſhould be ouſted likewiſe of their privilege, *cujus contrarium eſt verum*, as appears by daily practice. Alſo by the words here, *licet tangat nos*, the king has diſpenſed with his prerogative.

Object. 8 *Hen.* 6. 31. *b.*

Reſp. The words here are *vel alibi infra regnum Anglie emergentibus.*

Object. *Wilkin*'s caſe.

Reſp. That caſe went upon a particular reaſon; there was a copartnerſhip in the caſe. And it was declared that the univerſity ſhould not be prejudiced thereby. The demand there failed by the laches of the defendant, who did not follow it. It has been allowed in chancery, which court is not named in the charter. And in 21 *Eliz.* in *Poole*'s caſe, upon an information here

here for making cards it was allowed, and the defendant not compelled to plead.

Holt pro defendente: Firſt a *quo minus* is not a writ or bill of privilege, nor is it ſo called; as when privileged perſons ſue in the court, where they are privileged. *Vide Dyer* 328. 3 *Leon.* 223. But if the plaintiff were an accountant and entred upon his account, that would alter the caſe becauſe his attendance would then be requiſite, *de die in diem.* But a *quo minus* is now but a common action here. It appears by 38 *Aſſ. pl.* 20. that a *quo minus* did not lie unleſs a debt were confeſſed to the king, and then the king's debtor had a *quo minus* for the king's benefit. So it appears by 27 *Hen.* 6. 6. that a man *in cuſtodia in Mareſchal.* had the privilege of the court of king's bench, if he were ſued *alibi*, and might have a *ſuperſedeas*, which he cannot have now, becauſe it is now common practice, and though *cuſtod. mareſchal.* is but fictitious, and not real. *Vide* 6 *Hen.* 7. 9. conuſance allowed. Nor is there any prejudice to the king, for he may have execution elſewhere: As appears 2 *Inſt.* 115. And here the king has granted over the conuſance, whereby he has deprived himſelf of any benefit thereby. *Vide* 21 *Ed.* 3. 33. 22 *Aſſ.* 83. *Bro. Conuſance* 25. And the words here *licet tangat nos* are a bar to the king: As in *Moor's Reports* 126. *Reg.* 187. And the king's intereſt being here named expreſly, the patent ought to be held as ſtrong againſt him, as the law would be for him, if he had not been named.

Three ſorts of perſons privileged in the exchequer; namely, debtors, officers, and accountants.

Chief baron: There are three queſtions in this caſe; Firſt, whether the grant extends to this court or not? ſecondly, whether it extends to this action; and thirdly, whether the conuſance

ſance ought to be allowed here, the action being laid in *London?* As for the caſe of *Wilkins*, that has been cited, that is no precedent; for it was declared, that the conuſance there was not allowed, both becauſe of the laches of the defendant, and upon a particular reaſon of copartnerſhip. Three ſorts of perſons are privileged in this court; debtors, officers and accountants entered upon their accounts, the two latter ſhall have their privilege, if they be ſued elſewhere, but not the firſt. His privilege will not prevent conuſance, if the grant extend to this court: for a debtor has privilege only for the king's benefit, which is now diſuſed. But conuſance is not to be allowed in any caſe, if it appear that by allowing it there would be a failure of juſtice, as when they cannot try the cauſe, becauſe it is local; but if this do not appear at firſt, the cauſe ſhall be adjourned thither; and upon any erroneous or irregular proceedings, a re-ſummons lieth. *Et adjornatur.*

Afterwards, in the ſame term, it was argued by Mr. *Sawyer pro quer'*, and by Mr. *Mountague pro defendente.*

Sawyer: Conuſance ought not to be allowed in this cauſe: Firſt, becauſe it appears by the demand, that conuſance is granted to the chanceilor, or his commiſſary or deputy; but the demand here is made by the deputy and bailiff of the vice-chancellor; and ſo by the deputy of a deputy, contrary to the grant made to the univerſity. Secondly, the defendant is not alledged to have been a privileged perſon, when the cauſe of action accrued, but only when the action was commenced; and perchance he was not privileged when the cauſe of action accrued;

crued; and if ſo, he ought not to have it allowed. Thirdly, the grant extends not to this court, becauſe not named, but only to the courts of king's bench, common pleas, and other inferior courts. Fourthly, it is not conſiſtent with the dignity of this court to be included in the words, and other courts, *&c.* after the naming of ſeveral inferior courts. Fifthly, if they have conuſance of the cauſe, yet they cannot determine this cauſe, becauſe it is laid in *London*; and they cannot try by jury a cauſe laid there, becauſe it is out of their juriſdiction; and an inferior court muſt, upon conuſance allowed, proceed upon the ſame plea and declaration, as appears *Co. Lit.* 182. 4 *Inſt.* 113. and they cannot compel the plaintiff to declare anew.

Montague: It is objected, that conuſance ſhall not be allowed in this court.

Reſp. The caſe in the 2 *Rep.* archbiſhop of *Canterbury*'s caſe, is to be intended where no ſuperiors are named before the general words, but inferiors only: but without doubt, if there had been any ſuperiors named, the words and all other eccleſiaſtical perſons, would have comprehended all. See in *Co. Mag. Chart.* where it is ſaid, *communia placita non ſequantur curiam noſtram* extends to the court of exchequer.

Another objection has been made, becauſe the action lies in *London.*

Reſp. This does not hinder the conuſance, for the court has juriſdiction in all caſes that concern ſcholars or officers; and the cauſe here is not to be removed or adjourned thither to be tried there, but ought to be diſmiſſed here, that they may begin again there; and ſo are the precedents. And the clauſe in their charter is, that they may proceed as they pleaſe, *per teſtes,*

teſtes, according to the common or civil law; ſo that the laying of the venue in *London* does not hinder their proceeding there, becauſe the plaintiff muſt begin *de novo*.

It has been objected, that the vice-chancellor is but a deputy, and therefore cannot make a deputy to demand conuſance.

Reſp. This is not material, for a bailiff may properly demand it.

A fourth objection has been made, becauſe the defendant does not appear to have been a privileged perſon at the time that the action accrued.

Reſp. He ſhall be intended to have been ſo if the contrary appear not; and the precedents are with us as to that.

Hale chief baron: It ſeems clearly to me that the demand here is good, and that the univerſity ought to have the conuſance allowed: Firſt, becauſe the patent is general; that they ſhall have conuſance of all cauſes *ubicunque*, *&c. in Anglia*, and power to proceed as they will, according to the common or civil law. But ſuch a patent would be void at common law; becauſe not limited to a certain place, and becauſe it impowers them to proceed according to the civil law: but this patent is confirmed by act of parliament, 13 *Eliz.* and that as fully as if it had been tranſcribed into the act *verbatim*.

Here are three things conſiderable. Firſt, Whether or no the ſuit here by *quo minus* be a hindrance to the privilege of the univerſity? and I hold it is not; for the privilege of a debtor only entitles himſelf to the court, but is no bar to any other privilege.

Privilege of debtor only entitles him to the court, but is no bar to any other privilege.

Secondly, Whether the grant extends to this court or not? Reſp. It does moſt clearly; becauſe

cauſe the grant begins with ſuperior courts, as King's Bench, Common Pleas, and then deſcends to other inferior courts, *&c.* theſe words are ſufficient to comprehend this court, which is not ſuperior to the king's bench or common pleas. And by the caſes cited in 21 and 24 *Eliz.* it appears that this grant extends to cauſes depending in the chancery and exchequer. *Ergo, &c.*

Thirdly, Whether or no, if the plaintiff be diſmiſt here, there will be a failure of juſtice?

Reſp. There will not; there was in 37 *Eliz.* a caſe betwixt *Spelling* and *Jeffard*; where the town of *Maidſtone* demanded conuſance: and it was held, that the laying of the action in *London* did not ouſt the conuſance, becauſe the ſuit here was to ſtay and be diſmiſt, and the plaintiff to proceed there *ab origine de novo.*

Three ſorts of conuſance of pleas.

1. *Tenere placita*, which creates a concurrent juriſdiction.

2. *Cognitio placitorum*, commenced here, but belongs to another court.

3. Conuſance of pleas with an excluſive juriſdiction.

For the better apprehenſion of this, it is to be known that there are three ſorts of conuſance of pleas. Firſt, there is *tenere placita*, which does not ouſt any other court of juriſdiction, but creates a concurrent juriſdiction. The ſecond is, *cognitio placitorum*; as when a plea is commenced here, of which the conuſance belongs to another court. Thirdly, there is a conuſance of pleas with an excluſive juriſdiction, as in this caſe, that no other court ſhall hold plea, *&c.* and this is a *ſuperſedeas* to any other court. The firſt is a concurrent juriſdiction: the ſecond is to be taken advantage of by plea, and after trial the cauſe to be remanded: the third is excluſive of all others, and is a *ſuperſedeas* to them. *Vide* 20 *Jac. B. R.* in *Halſley*'s caſe, and 1 *Car. B. R.* where it is held, that the laying of the action in another place is not material, becauſe they muſt begin *de novo.*

Nor

Nor is the objection material, that the vice-chancellor, and not the chancellor, demands conuſance; for the court here is to ſuperſede upon notice of the patent. He concluded for the univerſity, that the conuſance ought to be allowed. Baron *Turner* accordingly; and conuſance was allowed accordingly. *Hardr.* 505.

Mich. 14 *Car.* 2. *in ſccio. Hardr.* 311. *Richard Proctor*, eſq; *verſus Francis Philips*, eſq; in an action upon the caſe, for diſturbing the plaintiff, to take the fees and other profits of one of the judges places in the ſheriffs court in *Guildhall*, *London*, (the action being laid in *London*); after Not guilty pleaded by the defendant, and iſſue thereupon, the plaintiff ſurmiſed to the court, that the place was granted to him according to the uſage of the city, by the mayor and aldermen, by which title he was in; and that the mayor, aldermen and commonalty of the city in common council aſſembled, pretend a title to the placing of judges there: ſo that it is like to come in queſtion betwixt theſe diſtinct parties of the corporation, whether has the better right to place judges: And hereupon he prayed a *Ven. fac.* to a foreign county, all the commonalty of the city of *London* being concerned in the ſucceſs of the trial.

The ſurmiſe neceſſary to obtain a foreign jury. See Strange 182.

But *per Hale* chief baron, *& totam curiam*, The ſurmiſe is not ſufficient to award a *Venire facias* to a foreign county; 1ſt, becauſe it does not appear that the title will come in queſtion upon this iſſue; for the defendant may perhaps inſiſt upon ſome other title, or that he has not taken the profits. And in all the caſes that have been cited, as in *Hob. Rep.* 85. *Day* and *Savage*'s caſe; and in *Smith* and *Hancock*'s caſe in *B. R.* and in the caſe of one *Bowbridge*, it

appeared by the iſſue that all the county was concerned, otherwiſe no foreign venue ought to be awarded. And in the caſe between *Day* and *Savage* the queſtion was, Whether the iſſue ſhould be tried by certificate or by a jury; and not whether a *Ven. fac.* ſhould iſſue into a foreign county. And in the caſe of *Smith* and *Hancock*, the defendant in treſpaſs juſtified by virtue of the cuſtom of the city of *London*; ſo that the city's being concerned in the cauſe, appeared by the iſſue, and not by ſurmiſe. Secondly, it does not appear by this ſurmiſe that there is not a ſufficient number of freeholders in the city to try this iſſue, who are not free of the city, nor within the diſtreſs of the city, which ought to appear, for elſe there ſhall not go a *Venire* into a foreign county. And in the caſe in *Dyer* 279. *b.* concerning the cuſtoms of the city of *York*, that wares foreign bought and foreign ſold within the liberties of the city ſhould be forfeited and ſeizable by the mayor, viſcounts and citizens, the *Venire facias* was awarded to the ſheriff of *Yorkſhire*, upon a ſuggeſtion that there was not a ſufficient number of freeholders within the city, not free of the city, to try the iſſue, as appears by *Bendloe's Rep.* caſe 39. Thirdly, It is not here ſurmiſed that the title will come in queſtion, but that it may come in queſtion, which is but a may-be. Fourthly, as it appears by the ſuggeſtion the conteſt is betwixt the corporation of the city itſelf; and the queſtion is, Whether the mayor and aldermen, or the mayor, aldermen and commonalty, aſſembled in common council, have the right to place judges there; ſo that the cuſtom of the city does not come directly in queſtion betwixt them and a ſtranger, but amongſt themſelves.

ſelves. Fifthly, if this ſuggeſtion were admitted to be good, yet in caſe the other ſide ſhould deny the fact of it to be true, how ſhould it be tried? To whom ſhould a venue be awarded to try it? In all caſes of foreign *Venire's*, they are awarded either by admittance or conſent of the parties, or upon a *Nient dedire*, or a demurrer over-ruled; as appears *Pl. Com.* 79. *b.* and *Dyer* 300, 367. ſo that upon the whole matter they agreed that the ſuggeſtion would not aid the plaintiff; but the court gave him leave to amend his ſuggeſtion, in regard the defendant had neither pleaded nor demurred to it.

Notwithſtanding cuſtom or privilege, it is too late to change the venue after iſſue joined.

Same plaintiff againſt the ſame defendant, *Hardr.* 327. *Trin.* 15 *Car.* 2. *in Sccio.* in an action of trover and converſion for money in the county of *Eſſex*, after Not guilty pleaded, and a trial at bar appointed, the recorder of *London* now moved that the cauſe might be tried in *London*, becauſe it concerned the office of a judge's place in the ſheriffs court in *London*; and that by their charter confirmed by act of parliament, matters that concern the city, or any office there, ought to be tried there and not elſewhere. And he produced a writ out of the Chancery, under the broad ſeal, for allowing the liberties of the city; and inſiſted that it appeared, by affidavits made in this cauſe for changing the venue, that the matter in queſtion aroſe within the city, and concerned it; and prayed the cauſe might be tried in *London: Sed non allocatur per curiam*; Firſt, becauſe it does not appear to the court upon record, that the cauſe of action aroſe within the city; and affidavits in the cauſe are not ſufficient, they being only collateral and interlocutory matters of record in the proceedings, and out of the pleadings.

ings. Secondly, becauſe this prayer comes too late, being after iſſue joined; and after a plea, or a ſpecial imparlance, the plea of antient demeſne or the like comes too late. Thirdly, if it were allowed, the party would be without remedy, it being after iſſue joined, becauſe the action is laid in another county; and ſo the plaintiff ſhould be enforced to ſuffer a nonſuit, or have a *Nil capias per billam* entered againſt him. Fourthly, becauſe it appears by the ſame affidavits that the city itſelf is concerned; and it is againſt reaſon that they ſhould try their own cauſe: nor is ſuch a privilege granted to them by their charter. And ſo it was ruled and adjudged in *Smith* and *Hancock*'s caſe in *B. R.* in an action of trover and converſion, brought for goods ſeized by the officers of the city, as forfeited to the city by the cuſtom there, *viz.* that that cauſe ſhould not be tried by certificate by the mouth of the recorder; but upon a ſurmiſe of ſpecial matter, it was tried by a jury of the county of *Surry*. *Et adjornatur.*

Conuſance of pleas cannot be demanded after iſſue.

It was moved at another day by ſerjeant *Keeling* to have the *ſuperſedeas* allowed, and the cauſe tried in the city, although conuſance of pleas could not be demanded after iſſue. He cited the *Regiſter of Writs*, fo. 180. where a *ſuperſedeas* iſſued to have an iſſue tried at the bar, which was awarded to be tried by *Niſi prius*; and *Regiſt.* 91. to the ſame purpoſe. To which the court anſwered, that the writ in this cauſe came too late, and that it was not poſſible, after iſſue joined, and a *Venire facias* awarded to try it in *Eſſex*, for the iſſue to be tried in *London*: and although, as appears by the *Regiſt.* fo. 4. a *ſuperſedeas* lies for the trial of lands held *in capite* in ſuch or ſuch a court; yet after iſſue

joined ſuch a *ſuperſedeas* lies not, but has been refuſed, as appears by 6 *Ed.* 3. fo. 15. ſo in caſe of *Priv.* it is too late after plea to claim it. *Dyer* 33, 34. Altho' in the 1ſt part of king *Hen.* 6. it was controverted; and in *Crew* and *Done*'s caſe, in *B. R.* in trover and converſion for corn, laid in *Middleſex*, whereas in truth the cauſe of action aroſe in *Cheſhire*, there were ſpecial pleadings to draw the cauſe down and make it triable in *Cheſhire*; to which there was a demurrer: but the court did nothing in it.

At laſt, upon the ſerjeant's prayer, the writ was entered upon record *de bene eſſe*, but no ſtop put to the trial.

Of actions in Wales *and the counties palatine, and within the juriſdiction of other inferior courts anciently brought in the office of pleas.*

Wales claim an excluſive juriſpiction.

The principality of *Wales* claim an excluſive juriſdiction, by the ſtatute of *Wales* 12 *Edw.* 1. on its being ſubjected to *England*; which claim is ſupported by ſeveral ſubſequent ſtatutes, in particular as follow:

King's writs never run into the Marches of Wales.

By ſtatute 26 *Hen.* 8. *cap.* 6. *ſect.* 6. which ſtatute gives a power to the gaol delivery of the next *Engliſh* counties to the Marches of *Wales*, to try perſons for murders and felonies committed in thoſe Marches, and to award proceſs for apprehending ſuch malefactors; it appears that the king's writ did never run into the Marches of *Wales*; and in *ſect.* 7. it appears that the antient counties of *North Wales* ſtill had the power of trying ſuch offenders reſerved to them by their own juſtices of the great ſeſſions; and by the 11th ſection the lord

marches were not to be deprived of any other of their powers or privileges. By all which it is inſiſted on, that the courts of *Weſtminſter* had nothing to do with *Wales*, or the Marches thereof, in any other inſtance than the trying of criminals for facts committed within thoſe Marches, and that only by virtue of this ſtatute.

Wales without any controul from the king's courts.

By the preamble to the ſtatute of 27 *Hen.* 8. *cap.* 5. it appears that juſtice was before that time done in the counties of *Cheſter*, *Flint*, *Angleſea*, *Carnarvan*, *Merioneth*, *Cardigan*, *Carmarthen*, *Pembroke* and *Glamorgan*, without any controul from the king's courts: and though by this ſtatute the king obtained a power of appointing, by his chancellor or lord-keeper, the ſeveral officers for adminiſtring juſtice in criminal caſes within thoſe counties; yet no power is given by it to any of the king's courts at *Weſtminſter*, eſpecially in civil caſes between party and party.

Statutes of Hen 8. give no power to the courts of Weſtminſter.

By the preamble of the two ſtatutes of 27 & 34 *Hen.* 8. which peculiarly concerned the laws in the eight old *Welch* counties above named, and the four new ones (which were erected by the laſt ſtature) namely, *Radnor*, *Brecknock*, *Montgomery* and *Denbeigh*, in *Wales*. It appears that the laws, cuſtoms, uſages, rights, *&c.* of *Wales*, were far different from thoſe of *England*; and therefore theſe ſtatutes direct the manner in which juſtice ſhould for the future be adminiſtred in the twelve counties of *Wales*; and though they ſay that the laws in *Wales* ſhould thereafter be the ſame with thoſe in *England*, yet thoſe ſtatutes are ſo far from giving any power to the courts of *Weſtminſter* to intermeddle in *Wales*, that they have expreſly erected

ed courts of grand ſeſſions for adminiſtring of juſtice to the inhabitants of *Wales*, in the ſame manner to all intents and purpoſes, as the courts of King's Bench and Common Pleas did adminiſter to it in *England*; and ſurely, ſay they, it muſt neceſſarily be inferred, that the courts of *Weſtminſter* were to be excluded from any juriſdiction; and it is very obſervable, that by the 27 *Hen.* 8. *cap.* 26. *ſect.* 3. the county of *Monmouth*, which was erected by virtue of that ſtatute, was before part of the Marches of *Wales*, and was then made an *Engliſh* county, and to be made ſubject to the courts of *Weſtminſter*; in order to which, it is enacted, that all ſorts of actions ariſing within that new county ſhould be tried by juſtices of aſſize as in *England*, and that the king's court ſhould have power to award, all manner of writs to the ſheriff and other officers of that county in the ſame manner as they could do to any *Engliſh* county, by which it appears, that without an expreſs ſtatute for that purpoſe, the courts of *Weſtminſter* could not have awarded any ſort of proceſs into that county, though it was but part of the Marches of *Wales*.

Wales a diſtinct and ſeparate juriſdiction.

By the whole tenor of theſe two laſt ſtatutes, it is inſiſted on that the courts of *Wales* were to have a diſtinct and ſeparate juriſdiction from the courts at *Weſtminſter*; and there does not appear to be the leaſt colour of juriſdiction given to the king's courts at *Weſtminſter* by thoſe ſtatutes; and it ſeems plain by the prior ſtatutes, and by the preambles to theſe two ſtatutes, that the inhabitants of *Wales*, before thoſe ordinances of 34 *Hen.* 8. were made, were governed by laws of their own, and which were quite different from the *Engliſh* laws; from

whence therefore (ſay the *Welch*) can the courts of *Weſtminſter* derive a juriſdiction? They may as well (ſay they) levy fines and ſuffer recoveries of lands in *Wales*, as ſend meſne proceſs there, from any power that has been given them by any of theſe acts.

The king as ſovereign ſhall do right.

Edward the Firſt, who conquered *Wales*, in his firſt ſtatute of *Weſtminſter*, *cap.* 17. for providing a remedy where a diſtreſs was impounded in a caſtle or fortreſs, enacts, "That if ſuch "diſtreſs be impounded in the Marches of "*Wales*, or in any other place where the king's "writ be not current, the king (who is ſove-"reign lord over all) ſhall do right there unto "ſuch as will complain."

As ſuch conqueror and lord over all, the king directed by his writs out of his exchequer in *England*, that ſuch right ſhould be done to his debtors and accountants in *Wales* which was then ſought for by his debtors and accountants out of *Wales*; and which power of iſſuing writs into *Wales* has been one of the peculiars of the office of pleas of this court ever ſince; and, like the trials in the next adjoining county to *Wales*, it is not by ſtatute law, but by preſcription immemorially eſtabliſhed. A few inſtances of this power in different reigns will, it is hoped, ſuffice here:

In the Bundle of Rolls, N° 68. in the 25th year of king *Edward* the Firſt, being thirteen years after his conqueſt of *Wales* and *Welch* ſtatute, is the following entry:

Action brought in off' pl'it' 13 years after the Welch ſtatute of union. Wall' ſſ.

Robertus Dymmock cuſtos ep'atus Menevenſis attach' fine brevi ad reſpondend. Joh'i Cornpiger filio & heredi et executori Teſt'i Will'i Cornpiger patris ſui defunct. de pl'ito tranſgr. Et unde queritur q'd cum idem Will'us per quoſdam felones d'ni regis in balliva d'ci Roberti eſſet interfectus prefatus Robertus

tus malitioſe reputans eundem Will'um eſſe felonem acceſſit ad domum ipſius Will'i in villa de Lanrethan Waſteyd & ex cofr' d'ci Johannis cepit teſtamentum pred'ci Will'i & penes ſe illud detinuit necnon et omnia bona & catalla que fuerunt d'ci Will'i ad valenciam centum marcarum occupavit & ea adhuc ei injuſte detinet ubi eadem bona nunquam fuerunt d'no regi forisfacta ſeu confiſcata ad dampnu' ſuu' centum librarum; et inde producit ſectam.

Action brought in Wales againſt the guardian of the ſpiritualities of the biſhopric of St. David's for ſeizing goods of a deceaſed perſon, under pretence they were the goods of a felon.

Et pred'cus Robertus venit & defend' vim injur' & quicquid, &c. et dicit q'd pred'cus Will'us et quidam alius cujus nomen ignorat quadam die inter ſe certarunt & poſtmodum pugnarunt & tandem uterque alium interfecit & igitur ſ'd'm modum & conſuetudinem illius patriæ ambo fuerunt felones prout per quandam inquiſitionem quam inde cepit plenius invenit idem Robertus bona & catalla ipſius Will'i in manum d'ni regis ad valenciam 22 l. per appretiationem inde f'cam cepit & eam cuſtodia ſua adhuc h'et liberand' cui cur' d'ni regis conſiderav'it Et quod plura bona que fuerunt pred'ci Will'i non cepit preter pred'cas 22 libras; Et hoc petit quod inquiratur.

Et pred'cus Joh'es non dedicit quin uterque ipſorum Will'i & alieni hominis ſuprad'ci alium interfecit ſed dicit q'd idem Will'us non fuit propter hoc felo domini regis nec ſed'm conſuetundinem illius pat'e tenetur felo domini regis in hoc caſu quia dicit q'd d'cus Will'us ſe defendendo pred'cum hominem interfecit & ſic compertum fuit per patriam et q'd d'cus Robertus malitioſe aſſerens ipſum Will'um eſſe felonem d'ni regis bona & catalla que fuerunt ejuſdem Will'i ad valenciam pred'carum centum marcarum cepit & penes ſe detinuit et adhuc detinet in forma ſuprad'ca; et hoc petit ſi l'it' quod inquiratur.

Ideo

An inquiſition ordered to be taken in Wales and to be certified to the barons.

Ideo mandatum eſt Walter' de Pederton tenenti locum juſticiar' regis in Weſt Wall' q'd capiat inde inquiſ. et q'd certificet baronibus, &c. in craſtino animarum, &c.

Againſt the prior of Monmouth, and an Engliſh jury next adjoining awarded to try the iſſue ariſing in Wales

In *Mich.* 35 *Ed.* 3. an action was brought by the prior of *Newent* againſt the prior of *Monmouth* (then part of *Wales*) for arrears of a penſion, *Quo minus, &c. unde exit' junct' Et quia compert' eſt in magno rotl'o de anno* 34 *in Hereford q'd d'cus prioratus de Monmouth exiit in Wallia de qua pri'a jur' jure pred'co hic venire non debet et etiam ex aſſenſu partiu' pred'carum peten' q'd jura illa ven' de propinquioribus locis viſ'm ſci' priorat' de Monmouth infra regnum Anglie in com' Heref. precept' eſt vic' q'd ven. fac. hic duodecim &c. de propinquioribus locis pred'cis quorum quilibet &c. per quos &c. et qui nec &c.*

For Tithes.

In *Eaſter* 40 *Edw.* 3. *Wall' ſſ. Pl'itum pro able de T. Viterna & al' pro d'nis decimis.*

Action for the prince of Wales, wherein his prerogative may be ſeen.

In 48 *Edw.* 3. an action was brought by *Edward* prince of *Wales* againſt *Simon Waneyn*, wherein may be ſeen the prince's prerogative for his debts.

In treſpaſs.

In *Trin.* 10 *Ric.* 2. *Hereford Wall' ſſ. Pl'itum pro Will'o Peycrow verſus Joh'em Ewyas de tranſgreſſion'.*

In the ſame term *Glouc' Wall. ſſ. Pl'itum pro Joh'e Pasford Ewyas verſus Will'um Peycrow de tranſgr' & Ven. fac. de propinquior' viſn' Anglican'.*

Welch tallies renewed and inrolled.

In *Mich.* 11 *Ric.* 2. *Wall' ſſ. de quadam tallia innovat' pro priore de Langeneth.*

Many of the like tallies are entered on this and the ſubſequent rolls.

In *Eaſter* 7 *Hen.* 6. *Wall' ſſ' Tallia innovata irrot'lat' pro ep'o Meneven'.*

In

In *Mich.* 8 *Hen.* 8. an action was brought by *Peter Stanley*, conſtable of the caſtle of *Harlaigh*, againſt *Griffith Knight*, chamberlain of North Wales, upon the ſtatute of 6 *Hen.* 8. for fees; the defendant pleads ſeverally; the plaintiff takes iſſue to two of the pleas and demurs to the third; the iſſues are tried and found for the plaintiff.

Againſt the chamberlain of North Wales for fees, who pleads ſeverally, and the iſſues are tried.

In *Trin.* term the 26 *Eliz.* one *Bradſhaigh*, a ſervant of the under-treaſurer, brought an ejectment in the office of pleas for lands in *Wales*.

Ejectment for lands in Wales.

In *Morgan* againſt *Morgan*, *Trin.* 1656. *in Sccio.* treſpaſs and ejectment of lands in *Brecknockſhire*. Not Guilty was pleaded, and a *venire facias* awarded out of *Monmouthſhire*, being neareſt to the place where the lands lay. After trial and a verdict for the plaintiff, *Griffith* moved in arreſt of judgment that there was a miſtrial in the caſe, and that the *venire* ought to have come out of *Herefordſhire* upon the ſtatute of *Rutland*, 12 *Ed.* 1. and it was held clearly by barons *Nicholas* and *Parker*, that the trial in *Monmouthſhire* was a miſtrial; for that *Monmouthſhire* was but made an Engliſh county by the ſtatute of 27 *Hen.* 8. within time of memory, and trials in *prox' Com'* of iſſues ariſing in *Wales*, have been time out of mind, and at the common law; ſo that a place newly made an Engliſh county cannot have ſuch a trial, no more than (in *Plow. Com. Rice Thomas*'s caſe) liberties time out of mind ſhall extend to a place newly taken in. Accordingly judgment was given for the defendant, and this they ſaid was the opinion of all the judges in *Serjeants Inn. Hard.* 66.

A welch cauſe cannot be tried in Monmouthſhire as prox' Com' Angli-can' becauſe but lately made an Engliſh county, and therefore held a miſtrial.

Foraſmuch as trials in prox' Com' of iſſues ariſing in Wales have been time out of mind.

In *Mich.* 18 *Hen.* 8. *Durham*, *ſſ. Knyvet* againſt *Uvedale*: This iſſue ariſing in the county palatine

Durham record awarded thither.

tine of *Durham*, the record was awarded thither.

Action of debt in Cheſhire.

In *Mich. Ed.* 1. *finiente* 24. *incipiente* 25. *Roll.* 5. *Juſtic. de Ceſt. ff. Fulco de ſco. Edmund po' lo' ſuo Joh'm le Paumer vel Joh'm le Cornbull verſus Robertum Horold de Ceſtr. de pl'ito debi. per J. de jus.*

Attornati de termino Paſch. anno 25 *Ed.* 1. *Rot.* 47. *Ceſtr' ff. Elena que fuitux. Joh'is de Monte alto executrix teſt'i ejuſdem Joh'is ponit loco ſuo cor. cl. de Matherfend Hugonem Bernard de Ketileby vel Ri'cum de Paleſreyman verſus A. de Monte alto pet. ipſam Elenam & Socios ſuos def. de pl'ito ad quiet. debi. per bre. ſur diro'i.*

In the ſame bundle of rolls of 25 *Ed.* 1. roll the 44th, intituled, *de craſtino cinerum & tribus ſeptiman' purif.* is the following entry.

Ceſtria, ff. againſt the abbot of Stanlawe in Cheſhire for rent by agreement in writing.

Abbas de Stanlawe attach. ad reſpondend. Johann. de Drokenefford Theſ. de Garderoba d'ni regis de pl'ito qd. reddat ei 440*l. quas ei debet pro eccleſia ipſius Joh'is de Childewell & Capellis de Gerſtan & Hale quas idem abbas ten. de eodem Joh'e ad firmam Et unde protulit quoddam ſcriptum ipſius abbatis in quo continetur qd. idem abbas tenet. prefato Joh'i* 440*l. pro eccl'ia & capellis ſuis pred'cis ſolvend. infra tres annos ſequen. quotibus videl't anno* 146*l.* 13*s.* 4*d. ad duos annos terminos per equales portiones ſcil't in feſto ap'lorum Petri & Pauli anno d'ni* 1295. *regni autem regis Edw.* 23°. 73. 6. 8. *& in feſto ſci. Martini in Hyeme proximo ſequen.* 73. 6. 8. *ſic continuando ſimilem ſolutionem duobus annis ſequentibus & quos ei injuſte detinet, &c.*

Et pred'cus abbas venit & dicit qd. de premiſ. duobus annis fecit ipſe plenam ſolutionem prefato Joh'i preterquam de centum libr. tam quas ſolvet eidem Joh'i die Lune proxima poſt mediam quadrag.

Et

Et niſi fecerit concedit pro ſe & ſucceſſoribus ſuis qd. de terris bonis & cat. domus ſue fiarit & levaverit Et quo ad reſiduum ſolutionis de eiſdem duobus premiſ. annis dicit qd. habet acquietantias ſufficientes ſuper quibus petit diem ſibi dari ad eaſdem acquietantias oſtendend' cur' inde certificand. Et dat. eſt ei dies videl't die lune prox. poſt feſtum annunciationis beate Marie ad oſtend. piccea Idem abbas cognovit ſe teneri prefat' Johanni pro tertio anno de pred'cis tribus annis in 146. 13. 4. ſolvend. inde unam medietatem ad feſtum ap'lorum Petri & Pauli anno regni Edw. 25. Et aliam medietatem ad feſtum ſci. Martini in Hyema proximo ſequen. Et niſi fecerit concedit pro ſe & ſucceſſoribus ſuis qd. de bouis & catallis terr. & ten. domus ſue fiarit & levaverit, &c. Poſtea die Jovis ante feſtum Pentecoſta ven. pred'cus abb. & ſolvit prefato Joh'i illas 100 l. quas ei ſolviſſe deb. ad med. quadr. ſuprad'cam prout idem ſol. cogn.

A cognovit, and unleſs defendant pays within a time limited his goods, &c. ſhall be taken, &c.

Placita de cro. ſci. Hil. anno r'ni regis Edw. 1. nu 22°. rot. 40. Lancaſt'r, ſſ. Joh'es de Mohant & Elena ux' ejus P. ſe. 4to. die verſus Thom. Banaſtr. & Joh'em de Badford exec. teſt'i Ric'i de Stocport defuncti de pl'ito qd. reddat eis 19 l. et ipſi non ven. et preceptum fuit vic. qd. ipſos venire fac. coram, &c. Et vic. mandavit qd. ad de Highwick Henr. de Charnok manuceperunt pred'cum Thom. et qd. Ric'us de Sunderland & Thom. de Hanaper manuceperunt predict. Joh'em quem non habent Ideo in Mi'a. Judic'm qd. diſtr. per terras, &c. Et qd. de exit, &c. Et h'eat corpora eorum coram, &c. in craſtino clauſ. Paſch. ad reſpond. &c. Et ad audiend. &c.

Ve. fa. awarded into Lancaſhire, and ſheriff directed to take bail, judgment of diſtrin. againſt the bail.

M'ia.

In *Mich 25 Ed. 1. Indorſ. Roll. 15. Lancaſt'r Rogerus de Hanerb'gh attach' ad reſpondend' Rad'o de Hengham de pli'to qd. reddat ei 4 l. 3 s. 4 d.*

A judgment in debt to pay by inſtalment.

quos

quos ei debet et unde protulit quoddam ſcriptum quod hoc teſtatur &c.

Et pred'cus Rogerus venit & bene cognovit ſe teneri pred'co Rad'o in pred'cis 4l. 3s. 4d. de q. ſolvet ei 20s. ad feſtum nativitat. ſci. Joh'is Baptiſte prox. futur. et 20s. ad idem feſtum anno revoluto. Et ſic de anno in annum 20 ſolidos ad pred'cum terminum quouſque pred'ce 4. 3. 4. plenar. finit' per ſolut. ita qd. in ultimo anno perſolvantur 234l. Et niſi concedit qd. de bonis & catallis ſuis fiant ad quorumcunque manus, &c.
M'ia. *Et idem Rogerus pro injuſta.*

The king's mandate to the ſheriff of Lancaſhire to take bail for the arrears of an account of a perſon in priſon there, which bail appear in the record to be in M'ia.

In 25 *Ed.* 1. *Indorſ. Roll.* 44. *Indorſed adhuc de cro. cinerum* is the following entry; *Lancaſt'r, ff. d'nus rex mandavit vic. Lancaſt'r breve ſuum de magno ſigillo quod quidem breve idem vic. retorn. coram baron. de ſccio. in quinden. ſci. Hilar. in hec verba Edwardus dei gratia, &c. vic. Lanc. ſalutem ex parte Rici portu cap'lli capti & detenti in priſona n'ra Lancaſt'r pro arrer. compoti ſui in quibus magr. Gerardus de Wyſpaynes parſona eccl'ie de Boulton ipſum aſſerit ſibi teneri de tempore quo fuit gall's ſuus in Boulton nobis eſt oſtenſam qd. aud. compoti illius ipſum Ri'cum ſuper eodem compoto indebite gravaverunt onerando ipſum de receptis que non recepit & non allocando ei expenſas & liberationes rationabiles in ipſius Ric'i non mod'i & gravamen ut dicitur. Tibi precipimus qd. ſi pred'cus Ric'us invenerit tibi ſufficientes manucaptores qui eum manucapiant h'ere coram Theſ. & baron. de ſccio. n'ro a die ſci. Hilar' in quindecim dies ad reddend. prefato Gerardo comp. ſuum pred'cum juxta formam ſtatuti de coi. conſilio regni n'ri inde proviſi tunc pred'cum Ricum a priſona n'ri*

pred'ca deliberari fac. pro manucaptionem pred'cam Et ſcire fac. prefato Gerardo qd. tunc ſit ibi cum rotul. & tall. per quos pred'cus Ricus compotum pred'cum reddidit ad faciend' inde & recipiend. quod juſticia ſua debit. Et h'eas ibi no'i'a manucaptorum & hoc bre. Teſte me ipſo apud Newark 28°. die Octobr. anno regni n'ri 25to. Et indorſatur predict. breve videl't qd. Joh'es de Parles, Will'us del Grex, Thom. fil. Roberti fil. Pagani & Rogerus de Scarebonk manucapt. h'ere pred'cum Ric'um coram baron. &c. ad pred'cum diem ad reddend' prefato Gerardo comp' ſuprad'cum Et qd. vic' ſcire fecit eidem Gerardo qd. eſſet ad eundem diem cum rot'lis & tall. ſcdm. tenor. bris. per Will'um de Caton. & Will'um de Thirmim qui quidem Gerardus per Joh'em de Staon attorn. ſuum venit ad audiend. comput. predict. Et pred'cus Ricus. ſolempnit. vocat. non venit Ideo manucapt' ſui in mi'a. Et precept. eſt vic. qd. M'ia. *venire fac. predict. manucapt. a die Paſche in tres ſept. ad reſpond. quare predict. Ricum. non H. prout ipſum manucapt. Et quod attach. predict. Ricum. per corpus, &c. Ita qd. h'eas corpus ejus ad pred'cum diem ad reddend. comp. in forma ſuprad'ca ad quem diem vic. non retorn. bre. Ideo in quinden. ſci. Joh'is capt.*

In rotul. attornator. de termino Hilar. anno 25 *Ed.* 1. *Indorſ. Rot.* 30.

Lanc. ſſ. Rogerus fil. Rogeri Baſſy po. lo. ſuo Henr' Tronet vel Thom' Harold verſus Will'um de Clifton de pl'ito debi. in pleno ſccio. per baron. In debt.

Indorſ. Rot. 31. *Lanc. ſſ. Joh'es de Lanc. po. lo. ſuo Will'um Brix verſus Abbatem de Furneys in pl'to debiti per Ide Soveham.* In full court by the barons.

In

In the ſame bundle of rolls, intituled, *Adhuc de oct'ab. & quindena ſci. Joh'is Roll* 71. is the following entry.

In debt and confeſſion, and damages awarded for the unjuſt detaining.

Lancaſtr', ſſ. Margaretta de Nevil attachiata ad reſpondend. Abb'ti de Furneaux in partem ſolutionis debitorum que idem abbas debet d'no regi de pli'to qd. reddat ei decem libras quas ei debet Et unde protulit tria ſcripta que hoc teſtantur Et quas ei injuſte detinuit & adhuc detinet ad dampnu. &c.

Et pred'ca Margaretta venit & h'ito viſu pred'corum ſcriptorum non dedicit quin ſunt f'cm ſuum & quin teneatur de pred'co debito reſpondere. Ideo conſideratum eſt qd. pred'cus abbas recuperet verſus pred'cam Margarettam pred'cas 10 *l. & dampna ſua q' taxantur ad* 20 s. *Et eadem Margaretta pro injuſta detinet. in mi'a.*

Mi'a.

The ſheriff of Lancaſhire in miſericordia for not returning a fieri facias.

In *Mich. ſ'cdo Ed.* 2. *Indorſ. Rot.* 7. *Lanc', ſſ. Preceptum fuit vic. ſicut plur. qd. tam de illis bon. et catall. A. de Preſtewick que cepit in manu d'ni regis ad valenc.* 60 s. *quam de aliis bon' & cat. terris & ten. que fuerunt ipſius A. anno r'ni regis Ed. patris regis Edw. nunc* 30 *fieri faceret* 35 *l.* 13 *s.* 4 *d. ad opus executorum Joh'is de Cranent defunct. Ita qd. illos denar. h'eret hic in craſtino Sci. Mich'is nunc pred'cis executoribus ſolvend. ad quem diem vic. retornavit quod levavit de bonis & catal' pred'ci A. quadraginta ſolid. de qu'bus reſpondevit' Et quia idem vic. videl't Will'us Gental non miſit nec ſolvit d'cos denar. vic. Retornavit ipſe in m'ia, &c.*

A quo minus lies within the cinque ports as well as within the counties palatine and Wales.

It is reported in *Hardres* 475. in a prohibition cauſe, Sir *John Williams* againſt *Lyſter* and others, *Hil.* 19 & 20 *Car.* 2. that *per cur'* a *quo minus* lies in the cinque ports, as well as within a county palatine, or in *Wales*; and rather in the cinque ports than in a county palatine;

latine; becauſe a county palatine has *jura regalia* within itſelf. And it is uſual to grant prohibitions into county palatines. And ſo it was done laſt term to the county palatine of *Lancaſter*, upon a ſuit commenced here by *quo minus:* and afterwards a bill preferred there to ſtay it. And ſo it would be if a ſuit were commenced in the admiralty there againſt law, a prohibition would lie: and the king's debtor has the ſame privilege that the king has, to ſue for his debt where he will. It would elſe be very inconvenient, if a private juriſdiction might do what they would, and there would be no remedy elſewhere. And *Yelv. Rep. Criſpe* and *Verall*'s caſe was cited, which was in caſe of an appeal of death, the party being ſlain within the cinque ports; and yet the appeal brought in *B. R.* the party being *in cuſtod. mariſchal.* and a debtor here has the ſame privilege.

Prohibition ſent into Lancaſhire.

In *Hil.* 2 *Hen.* 4. proceſs was awarded to the cinque ports and a trial thereupon had.

Proceſs awarded to the cinque ports.

On the file of writs of *Mich.* 5 *Ed.* 4. a *quo minus* was directed *Conſtabular' caſtr' n'ri Dover' ac cuſtod. quinque portuu' ſeu ejus locu. tenen. ibm. ſalutem Vobis mandamus qd. capias Joh'em Aylard de Winchelſey in pl'ito tranſgr.*

In 2 *Hen.* 4. *quo minus direct. Conſtabular. caſtri Dover' cuſtod. quinque portuu.*

In *Mich.* 4 & 5 *Ph. & Mary* an *habeas corpus* was directed to the conſtable of *Dover* for *John Almanſon* of *Dover ad's Tho. Wiſeman*, upon an action of debt by bill, and judgment thereupon for the plaintiff, and *ca'ſa.* and *teſtat. conſtabular. Dover. Vide Rot.*

In 2 *Ed.* 2. an action was brought by *Walter de Bedwink* againſt *Alice*, daughter of *Nicholas Leken de pl'ito t'nſgr. pro ſcandal. verbis in palac.*

The ſame to the palace of Weſtminſter.

Weſtm. & ve. fa. hoſtiar. ſccii. de viſn. de palas ad r' bon. inquiſ. de ho'ibus cur. & aliis ho'ibus manen. juxta palatiu. predict. & vered'c'm pro quer. & def. commiſſ. pro fine & parte & pardonatur quia pauper.

In *Mich.* 35 *Ed.* 3. an action was brought by *Chaloner* againſt *Ratleſden pro tranſgr' & contempt. in non retornando bri'a ei deliberat. in aula Weſtm. ſuper gradus ſccii. & vic. pled. non cul. & ve. fa. cuſtodi palatii qui retorn. bre. & quer. non prob.*

In 33 *Hen.* 6. a *capias* directed *cuſtodi palatii Weſtm. pro Joh'e Glouceſter cl'ico pipe in t'nſgr. in Herif.*

In *Mich.* 7 *Ed.* 4. the like *int Nich'um Thomas & W. Eſney.*

Of the juriſdiction out of the kingdom.

Letters patent to the keeper of the iſland of Guernſey to try a cauſe there.

Wyntred againſt *Apleby in pl'ito t'nſgreſſion. pro aſportac. petrarum vocat. milſtones inquiſ. agardat. fuit per l'ras paten. cuſtod. Inſule de Guernſey ad triand. exit. ib'm.* The governor ſends it back unſealed; the barons diſallowed and ſend a new commiſſion to try it as before, and then it is tried and returned aright, and judgment for the plaintiff. *Mich.* 1 *Ric.* 2.

Writ directed to the treaſurer and barons of the exchequer in Ireland to take the goods of the keeper of the temporalities of the archbiſhop of Canterbury, in the hands of a perſon at

Rex Theſ' & baronibus de ſccio. ſuo Dublin ſalutem Cum magiſtr. Wills de Epworth nuper cuſtos temporaliu. archiep'atus Cantuar. ſede vacan. in manu n'ra exiſten. nobis tenetur in diverſis computis de temporalibus pred'cis de tempore quo habuit inde cuſtodiam per quos comp'os ſumas non modicas denar. idem Will'us nobis teneri deb. ac Jam intellexerimus quod diverſ. bona & catalla ipſius m'ri Will'i ad valenc. 152 l. in manibus cujusdam Alani Borſweyn de Cork in partibus Hib'nie

Hib'nie qui a diu eſt obiit ut dicitur extiterunt & quod idem Alanus ſi' lit' prefat. Will'o in diverſis denar. ſum'is & comp'is eidem Will'o reddend. de tempore quo fuit receptor denar. ipſius m'ri Willi. teneatur Idemque Will'us ad ſolutionem ſummarum pred'carum minus ſufficien. exiſtat ac inter cætera que regiam dignitatem exornant illa conſuetudo antiqua n'ri & progenitorum n'rorum temporibus uſitata ita nos prerogat. qd. a quibuſcunque debitoribus n'ris ſint debita n'ra levand. & de bonis eorum ſolvend. priusquam eorum creditoribus ſatisfiat noſque ea que regiam dignitatem n'ram pred'cam concernunt manu tenere & ſecuritati n're ſolutionis denar. predict. proſpicere acad. debitores ipſius Will'i propter inſufficien. ſuam capere volen. vobis mandamus firmiter injungen. quod o'ia bona & catalla ipſius m'ri Will'i quo per inquiſ. inde ſi neceſſe. fuit. capiend. vel alio modo l'ittimo inveneritis in manibus pred'ci Alani extitiſſe in quorumcunque manibus nunc exiſtant in partibus pred'cis Et etiam bona & catalla que fuer. pred'ci Alani arreſtari faciatis ea ſub hu'moi arreſt. ſalvo & ſecure abſque diſtractione deſtructione elongatione ſeu diminutione aliquali cuſtodiatis quouſque aliud a nobis habueritis in mandatis Et quid inde feceritis que & cujusmodi bona & catalla tam ea que fuerint pred'ci m'ri Will'i in manibus pred'ci Alani ut dicitur exiſten. qui ea que fuerint prefat. Alani ceperitis & cujus valoris Theſ. & baronibus de ſccio. n'ro apud Weſtm. a die S'ci Mich'is in quindecim dies ſeparatim diſtincte & aperte conſtare faciatis Et habeatis ibi hoc breve Teſte Gervaſio de Wilford apud Weſtm. 15 die Julii anno r'ni n'ri 25°. per barones & al. deconſ. 25 Ed. 3.

Cork in Ireland, for ſecuring a debt due to the crown.

Bre. d'ni regis juſtic. Hibernie direct. ad certificand. regi qui fuer. juſtic. ſufficientes & qui non recitando qd. juſtic. regis tam ad coia. pl'ta juſtic. n'ram

Writ to the juſtices in Ireland to certify.

n'ram Hib'nie ſequent. Anglic. eſſe debeant. Mich. 12 *Ed.* 3.

Of actions brought by, for and againſt the king.

Actions brought at the ſuit of the king againſt his tenant.

Action brought by the king againſt *William de Berchey* of a plea of treſpaſs *pro ſucciſſione arborum in vaſto & boſcis regis def. exiſten. tenen. manerii regis de Stratford in Com' Suff'*, and iſſue joined thereupon. 22 *Ed.* 1.

Againſt a prior for preſenting a chapelany in diſheriſon of the crown.

The like action on the ſame file againſt the prior of *Leeds*, *pro preſentac' capellani in exheredac. regis. Def. pl'itat' feoffament' Rob'ti Creaker de advocatione capelle pred'ce & judicium ſuperinde reddit' verſus Regem qd. nil cap. &c. Et qd. prior & conventus retineant advocationem, &c.* 22 *Ed.* 1.

For part of a debt contracted as ſupervi-ſor of the king's works.

Againſt the prior of St. *John* for 10 *l.* in part of payment of debts *in quibus R. de C. regi tenebatur tempore quo fuit ſuperviſor operac' regis —— def. deb' prefat. R. ſuperſcript obl' & judicium pro rege ſuperinde.* 30 *Edw.* 3.

For falſe impriſonment of the king's ſervant.

Joh'es de Munden ex parte regis ſequitur Billam de faux impriſonment cujuſdem R. C. unius operar' regis in capella Weſtm. abſque aliquo attorn' vel atti' regis. Mich. 31 *Edw.* 3.

Action brought by the king againſt the debtor of his debtor, and judgment q'd def't eat inde ſine die & recedat quietus ſalvo jure regis

Action brought by the king againſt *Jo.* ſon and heir of *Jo. Conſtantine*, in a plea of debt for 136 *l.* which the ſaid *Jo.* the father owed *Hen. de Burton*, an outlaw, and counts upon a bond—Defendant pleads a pardon *de touts dets & demands, &c. per actum parliamenti & ſuper adviſament' judicium eſt q'd def' eat inde ſine die & recedat quietus ſalvo jure regis. In R'o pl'itorum de Mich.* 11 *Ric.* 2.

Ed'rus

Ed'rus dei gratia rex Angl' & Francie & d'nus Hibernie vic' London ſalutem Precipimus vobis q'd venire facias coram baronibus de ſcc'io n'ro apud Weſtm' die Mercur' ſ'cdo die Dec' prox' futur' Joh'em Brompton civem & mercatorem Eb'orum ad reſpondend' nobis de 8. 13. 9. precipimus etiam vobis q'd venire fac' coram prefat' baronibus n'ris ad diem & locum predict' Joh'em Stockton civem & mercatorem Eb'orum ad reſpondend' nobis de 8. 13. 9. & Venire fac' ib'm ad eundem diem Will'um Wilſon civem & mercatorem Eb'orum ad reſpondend' nobis de 8. 13. 9. quos nobis debent & injuſte detinent ut Henr' Sotell qui pro nobis ſequitur dic' ſicut r'onabiliter monſtrare poterit q'd inde reſpondere debent Et h'eas ibi hoc breve teſte P. Arderne chr' apud Weſtm' 28 die Nov' anno regni n'ri primo Mildenhale. In *Mich.* 1 *Ed.* 4. Venire facias for the king.

Indorſ. Joh'es Brompton et ceteri infra cap'end' ni'hil habent in ball'ia n'ra per quod poſſunt attach' reſponſ' Joh's Lok & Geo. Ireland vic' J'c cap' ret' Sabb'i 5 Dec' prox' futur'. The return of the Ven. fac.

Per filac' Briu' de Mich. 1 *Edw.* 4. *ex parte clerici pl'itorum.* See more of the like kind in the 2d vol. under the title of *Ven. fac.*

Action brought by the king as duke of *Lancaſter* in the name of his attorney general againſt Sir *John Forteſcue. Mich.* 3 *Hen.* 7. *Eſſex.* Action for the king as duke of Lancaſter.

Note, that in every action of treſpais for the king, no writ of inquiry of damages ought to be adjudged, but a *Capias pro fine.* No writ of inquiry of damages for the king but a capias pro fine.

Breve de deb'o pro rege & executore cujus teſtator indebitat' fuit regi & prerogative regis ib'm q'd ſatisfiat regi de deb'o debitoris ſui. 30 *Ed* 3. For the king and executor to recover a debt due to teſt'or, who was indebted to the king.

Quo minus pro rege & parte in pl'ito debiti inter regem & Walterum Box & al' & Smithenſe def'. Quo minus for the king and others in debt.

Action againſt ſheriff to be acquitted againſt the king.

Action brought by the prior of *Hickling* a. gainſt the ſheriff of *Norfolk ad acquietand' ipſum verſus regem de* 40 *s. quos def. levavit de q' de fine per ipſum regi pro licenc' &c. et def. non ven' tamen q'*.

Narr' & judicium q'd def. oneretur verſus regem & cap's pro fine & q' exoneretur. 30 *Ed.* 3.

The like againſt the queen.

The like action *de pl'ito acquietand' verſus reginam.* 30 *Ed.* 3.

Judgment for the party and not for the king.

An action brought by *quo m's* for the king and party, and judgment given *pro parte tantum & non pro rege*, and execution accordingly. 25 *Ed.* 3.

Diſtring' jur' between king and party.

Diſtring' jur' between the king and party in a plea of treſpaſs and contempt. *Mich.* 8 *Ed.* 4.

The king muſt not be made a party without his attorney general's conſent.

It was held by the court in the exchequer, that no *Niſi prius* ſhall be granted there where the king is a party, without the conſent of the king's attorney general. *Savile's Rep.* 2.

Error, where the king is a party, muſt be by petition.

It was held by all the barons, that in any writ of error where the king is a party, the other parties ſhall apply to the king privately by petition, where the ſubſtance of the firſt judgment is deſired to be reverſed: but by thoſe, and by the attorney general, if error be in the ſame proceſs where it is a collateral matter, and not in the body of the judgment, Mr. attorney general may in his diſcretion grant error without petition to the king. *Savile's Rep.* 131.

Such are the actions and privileges cognizable and allowable in the office of pleas, and in antient times were commenced by bill or original, and in latter times by *ſubpœna in favorem juſtitiæ*.

Of

Of original Writs, which very antiently iſſued out of the office of pleas.

Original writs.

The actions moſt antiently commenced were by the writ called *Venire facias ad reſpondend'*, and by the moſt antient files of writs, it appears that the proceedings of thoſe times were alſo by writs of *Diſtringas*, *Capias*, attachments, *ſcire facias*, and ſometimes by *Quo minus*, then called a *Capias quo minus*.

Writs in uſe about Edward the Third's time.

The writs in uſe about *Edward* the Third's time, as appears from the files of writs of thoſe times, were as follow:

A *ſupplicavit*, in exoneration of a *Venire facias*, 12 *Edw.* 3.

A *Venire facias ad reſpondend'* for an accountant, *Mich.* 24 *Ed.* 3.

A *Venire facias* for the king's farmer, *Trin.* 32 *Ed.* 3.

A *Venire facias* for the keeper of the queen's gold, *Trin.* 34 *Ed.* 3.

Attachment, *Mich.* 34 *Ed.* 3.

Venire facias for the clerk of the pleas, *Eaſter* 37.

Venire facias for the king's farmer, *Eaſter* 37.

Capias quo minus, *Eaſter* 37.

Suplicavit, in exoneration of goods of felons, *Eaſter* 37.

Suplicavit in exoneration of a biſhop, *Eaſter* 37.

Capias quo minus, 9 *Ric.* 2.

Capias & teſtatum capias, 1 *Ed.* 4.

Venire facias for the chancellor, *Mich.* 1 *Ed.* 4.

Of the cities and towns having a ſheriff or ſheriffs.

Cities and towns having a ſheriff or ſheriffs.

Two ſheriffs
- at the city of *Briſtol* in the county of the ſame city.
- at the city of *Coventry* in the county of the ſame city.
- at the city of *Cheſter* in the county of the ſame city.
- at the pariſh of *St. Peters* in the county-borough of *Carmarthen.*
- at the city of *Gloceſter* in the county of the ſame city.
- at the city of *Lincoln* in the county of the ſame city.
- at *London*, to wit, in the pariſh of *St. Mary le Bow*, in the ward of *Cheape.*
- at the city of *Norwich* in the county of the ſame city.
- at the town of *Nottingham* in the county of the ſame town.
- at the city of *York* in the county of the ſame city.

One ſheriff
- at the town of *Berwick* upon *Tweed* in the county of the ſame town.
- at the city of *Canterbury* in the county of the ſame city.
- at the city of *Exeter* in the county of the ſaid city.
- at the town of *Haverfordweſt* in the county of the ſaid town.
- at the town of *Kingſton upon Hull* in the county of the ſaid town.
- at the city of *Litchfield* in the county of the ſaid city.

one

One ſheriff { at the town of *Newcaſtle upon Tyne* in the county of the ſaid town. / at the town of *Poole* in the county of the ſaid town. / at the town of *Southampton* in the county of the ſaid town. / at the city of *Worceſter* in the county of the ſaid city.

Writs to be directed to the ſheriff or ſheriffs, except in the counties palatine and Berwick upon Tweed.

Such as are not within the counties at large, having a ſheriff or ſheriffs, muſt have the writs directed to them; but the ſheriffs of the cities of *Cheſter* and *Durham*, as well as of the counties of *Cheſter*, *Lancaſter* and *Durham*, being counties palatine, are reſpectively ſubordinate to the chamberlain of the county palatine of *Cheſter*, the chancellor of the county palatine of *Lancaſter*, and the biſhop of *Durham*, whoſe mandates only their reſpective ſheriffs obey; and therefore in iſſuing proceſs, regard in theſe (as well as other caſes of the like kind) muſt be had to the place where it is to be directed: For inſtance, if the writ is to be directed to the city or county of *Cheſter*, it muſt be directed to the chamberlain of that county palatine: if to the city or county of *Durham*, it muſt be directed to the biſhop of that county palatine; and if to the county of *Lancaſter*, it muſt be directed to the chancellor of that county palatine; and if to the town of *Berwick upon Tweed*, it muſt be directed to the mayor, *&c.* who have an excluſive juriſdiction from *England*; or if to particular towns, (though they have not ſheriffs) ſuch as *Dover*, *Hythe* or *Romney*, in *Kent*, the writ muſt not be directed to the ſheriff of *Kent*, (in whoſe bailiwick they are not) but to the conſtable of *Dover*, whoſe power over them

Writs to the cinque ports or towns within the juriſdiction of the conſtable of Dover, to be directed to the conſtable.

them and the reſt of the cinque ports is diſtinct from the ſheriffs, and extends itſelf over thoſe and other towns in that neighbourhood; and ſo of other cities and towns, having diſtinct juriſdictions; a few inſtances and forms of which you will find in the Appendix.

Of the returns of writs.

If on a return day,

In *Hilary* Term,

Of the returns of writs.

In eight days of Saint *Hilary*
From the day of Saint *Hilary* in fifteen days
On the morrow of the purification of the bleſſed Virgin *Mary*
In eight days of the purification of the bleſſed Virgin *Mary*

In *Eaſter* Term,

} next coming,

From the day of *Eaſter* in fifteen days
From the day of *Eaſter* in three weeks
From the day of *Eaſter* in one month
From the day of *Eaſter* in five weeks
On the morrow of the aſcenſion of our Lord

In

In *Trinity* Term.

On the morrow of the holy Trinity —
In eight days of the holy Trinity
From the day of the holy Trinity in fifteen days —
From the day of the holy Trinity in three weeks — } next coming.

In *Michaelmas* Term,

On the morrow of All Souls
On the morrow of Saint *Martin*
In eight days of Saint *Martin*
From the day of St. *Martin* in fifteen days —

If on a day certain, any day but *Sunday*, and ſuch other days as are called *dies non juridici*: For inſtance,

On the ſixth day of *November* next coming.

On the twenty-eighth day of *November* inſtant.

The writs of *ſubpœna* and *habeas corpus*, in particular caſes hereafter mentioned, may be made returnable immediately; in which caſe the form of words are theſe, namely,

"Immediately after the receipt of this our writ."

Antient returns out of term from the opening to the ſhutting up of the exchequer.

It appears by the teſte and returns of the writs of antient times iſſuing of the court of exchequer, that they were both dated and made returnable out of term from the time of opening and ſhutting the exchequer, and within that time accountants are ſtill caſt out of court, and therefore it is likely that the courſe now uſed of adjourning

The adjourning from term to term not very antient, and ſeems more reaſonable as to debtors than as to accountants, whoſe forms and times of caſting out and accounting ſtill continue the ſame.

journing all matters depending between party and party, from the laſt day of the term to the firſt day of the next term, is not very antient; and however reaſonable the foundation was for making that alteration as to debtors, it has not the ſame appearance of foundation for making the ſame alteration in reſpect to accountants, who ſtill continue the old forms of accounting, and the ſame times of caſting out.

Dies non juridici.

All *Sundays*, (except as return days) and the feaſt day of the purification in *Hilary* term, the Aſcenſion day in *Eaſter* term, and *Midſummer* day in *Trinity* term, are called *dies non juridici*, and writs returnable on thoſe days are not good.

All writs, except Scire facias and againſt bail, may be teſted one day, and returnable the next.

Every proceſs in this office, except *ſcire facias*, and caſes to fix bail as after mentioned, may be teſted one day and returnable the next, or any day after, except as above, ſo as ſuch return day does not extend beyond the laſt day of the term next following the teſte of the writ.

No writ to be executed on a Sunday.

The ſtatute of 29 *Car.* 2. *cap.* 7. *ſect.* 6. enacts, "That no perſon upon the Lord's day ſhall "ſerve or execute, or cauſe to be ſerved or exe- "cuted, any writ, proceſs, warrant, order, "judgment or decree, (except in caſes of trea- "ſon, felony, or breach of the peace), but that "the ſervice of every ſuch writ, proceſs, war- "rant, order, judgment or decree, ſhall be "void to all intents and purpoſes whatſoever; "and the perſon or perſons ſo ſerving or exe- "cuting the ſame, ſhall be as liable to the ſuit "of the party grieved, and to anſwer damages "to him for doing thereof, as if he or they had "done the ſame without any writ, proceſs, war- "rant, order, judgment or decree at all."

Of the writs now in uſe.

The ſeveral meſne proceſſes now in uſe are all *non omittas's*, and it could not be otherwiſe when the king ſent his writs againſt accountants who uſually reſided within liberties. By the juriſdiction of this court therefore, the proceſs in the office of pleas hath always gone throughout all liberties within the kingdom of *England*, principality of *Wales*, and town of *Berwick* upon *Tweed*, even where the proceſſes of the other courts of *Weſtminſter Hall* were not uſed to run, and where they are ſtill in real and local actions hung up by pleas to their juriſdiction, or liable ſo to be.

The writs are all non omittas, and go into all liberties within England, Wales, and Berwick on Tweed.

All original meſne or judicial proceſs iſſuing out of this office except the writ of *ſubpœna*, and its ſubſequent proceſſes of contempt hereafter mentioned, are entered and ſigned by the maſter of the ſaid office.

And are ſigned by the maſter, except writs of ſubpœna and attachments.

The court of exchequer is excuſed from the payment of fines to the king upon all meſne proceſs, by reaſon whereof many actions in debt are brought in the office of pleas, which perhaps otherwiſe might not.

No fines to the king.

The defendant cannot caſt eſſoigns as in other courts, nor can he wage his law *contra regem vel debitorem.*

An action was brought by *John Thorold* againſt *Robert Goodrich* in detinue *pro equo & ſella.* Defendant waged his law, and judgment was thereupon had for the plaintiff; *quia eſt contra uſum & conſuetudinem ſcii.* 1 *Ric.* 3.

Defendant cannot caſt eſſoign nor wage his law, being contrary to the uſage and cuſtom of the Exchequer.

The

The like judgment was obtained in *Trin.* 8 *Hen.* 5.

In *Mich.* 34 *Hen.* 6. it was agreed for law, that a man cannot wage his law on a *quo minus*, and ſo it was held for law in the time of king *Hen.* the 8th. *Concordat T. Ley in Fitz.* 10 *Ed.* 3.

A debtor of the king brought *quo minus in ſccio.* upon a contract, and the defendant was ouſted of his law for the advantage of the king. *Vide Brooke, Tit. Quo min'.*

Of the *venire facias ad reſpondendum*:

Of the ve. fa. ad reſpond.

The firſt and moſt antient proceſs as has been ſaid is the writ called *venire facias ad reſpondend.* which is an original, ſpecifying the cauſe of action, and is directed to the ſheriff of the county where the defendant's family reſide, for it matters not whether he is in *England* or not, as appears by the following caſe.

Ve. fa. left at defendant's houſe good, though he is beyond ſea.

Brier againſt *Lanſdown*, *Nov.* 25. 1720. it was moved by Sir *Conſtantine Phipps* to ſet aſide a *venire facias* (which was the old proceſs of this court on the plea ſide) and a *diſtringas* thereupon, upon an affidavit that the defendant was in *France*, when the *venire facias* was left at his houſe: but upon hearing ſerjeant *Cheſhyre* and Mr. *Bootle* on the other ſide, the proceſs was adjudged to be good by three barons againſt baron *Price*. *Bunb.* 67.

How returnable.

This writ is made returnable on a return day, as in the court of common pleas, or on a day certain, and may be teſted one day, and made returnable the next, for which the ſolicitor pays 6*s.* 2*d.* and adds to it his fee of 6*s.* 8*d.*

How formed in Edw. the Third's time.

The form of this writ in the time of *Edw.* the 3d was, *Si A. B. fecerit te ſecur' de clamor. ſuo pros: tibi precipimus qd. ve. fa' coram baronibus, &c.*

&c. the preſent and other forms are inſerted in the appendix.

It is ſent to the ſheriff who grants his warrant to his bailiff, which bailiff leaves a copy of the warrant (which is in the nature of a ſummons) with the defendant, or with his father, mother, ſon, daughter or ſervant, at his houſe or lodgings, or even with the perſon with whom he lodges; and returns his warrant to the ſheriff indorſed in what manner he has ſo ſerved it, on which the ſheriff when called upon returns the writ of *venire facias* by indorſement thereon, in the form following; namely; Sheriff's warrant on the ve. fa. Sheriff's return on the writ.

" The ſummoners of the within named de-
" fendant are *T. B.* and *N. O.* (the ſummoning
" bailiff and another). The anſwer of *J. S.*
" Eſq; ſheriff."

If the *venire facias* be againſt a corporation, ſuch as the mayor, commonalty and citizens of the city of *London*, it cannot be directed to that city or the county of *Middleſex*, whoſe ſheriffs are citizens and part of the corporation. It muſt therefore be directed to the next adjoining county, which is *Surrey*, wherein iſſues may be raiſed, and being returned and filed, the *diſtringas* hereafter mentioned muſt be directed to the ſame ſheriff, the forms whereof and of the return, you will find in the appendix. Ve. fa. againſt a corporation.

The writ of *venire facias ad reſpondendum* is more particularly uſeful in caſes where the ſtatute of limitations makes it neceſſary to file an original to ſave it, and where perſonal ſervice of proceſs, or the proceeding by arreſt are impracticable, and where the defendants are corporate bodies, peers, members of parliament, or ſuch others whoſe perſons are exempted from arreſts by privilege of peerage or of parliament, The uſe of the ve. fa.

ment, or by being out of the kingdom have left iſſues in lands or goods to anſwer for them and compel them to come into court.

As this writ and its proceſſes of contempt hereafter mentioned, are iſſuable with the ſhorteſt returns, and the defendant can caſt no eſſoigns when compelled to come into court (by both which the proceedings in the other courts are greatly delayed) they have been much uſed and may probably be more ſo when they are better known.

Of the diſtringas.

Diſtringas.

The defendant not having entred his appearance in the office within four days, excluſive of the return day named in the writ of *venire facias*, and the writ and return ſo made being filed in the office, the attorney is impowered by virtue thereof to iſſue a writ of *diſtringas* to the ſheriff of the ſame county, the form of which is inſerted in the appendix, for which and the proceedings ſubſequent to the iſſues of the *venire facias*, the ſolicitor pays as follows; namely, for the warrant on the *venire facias*, and copy 3, 4. and for the ſervice in town or country 5*s*. if diſtant 10*s*. for the ſheriffs return 2*s*. filing 1*s*. *diſtringas* 6*s*. 2*d*. to which the ſollicitor adds his own fee of 6*s*. 8*d*.

To raiſe iſſues on the defendant's lands or chattels.

The ſheriff iſſues his warrant on the ſaid *diſtringas*, and his bailiff by virtue thereof takes iſſues of the defendant's lands or chattels to the value of 40*s*. or leſs, or any entire thing of greater value which he detains by way of pledges in the hands of the ſheriff till the defendant's appearance is entred.

Whenever

Whenever the defendant's appearance is entred, the iſſues detained in the hands of the ſheriff (if there are ſuch) are returned to him, and plaintiff files his bill or declaration in the form hereafter ſet forth, and proceeds thereon to judgment in the uſual courſe.

Iſſues returned on appearance entred.

But if the defendant ſtill declines to appear in contempt of the proceſs of the court, the ſheriff being called upon for a return of the writ of *diſtringas*, calls in his warrant indorſed by his bailiff with what has been done, and indorſes on the back of the writ of *diſtringas* if any thing is done, as follows, "The manucaptors of the within named (defendant) are "*W. J.* and *S. A.* (the ſummoning bailiff and "another) the anſwer of *C. G.* Eſq; ſheriff. "Iſſues forty ſhillings."

The ſheriff's return.

The writ of *diſtringas* ſo returned and filed in the office gives authority to the attorney to iſſue further proceſs of contempt (if defendant's appearance is not entred); namely, an *alias diſtringas*, on which in like manner the ſheriff grants his warrant to his bailiff, who takes iſſues of the goods or lands to the value of 4 *l.* (being double the iſſues on the former *diſtringas*) and that writ being alſo returned and filed a *pluries diſtringas* iſſues, and ſo after the firſt *diſtringas* further proceſs of *diſtringas* may iſſue *de die in diem ad infinitum* till defendant's appearance is entred, doubling the iſſues of the laſt *diſtringas* filed on executing the further proceſs of *diſtringas*, each whereof may be made with the ſhorteſt return, in order to enhance the meaſure of contempt, and to ſpeed the defendant's appearance, and in caſe he will not appear (in order that the iſſues thus raiſed may be eſtreated) to apply to the treaſury for obtaining a warrant

Alias and pluries diſtringas.

from the crown to pay them to the plaintiff in manner hereafter mentioned.

On iſſuing every ſubſequent *diſtringas* the ſollicitor pays as follows; for the warrant on the former *diſtringas* 2 *s.* 6 *d.* officer 10 *s.* return by the ſheriff 2 *s.* filing 1 *s.* *alias diſtringas* 6 *s.* 2 *d.* to which he adds his fee of 6 *s.* 8 *d.* and ſo of all the reſt.

No diſtringas muſt iſſue before defendant is warned by venire facias.

It was petitioned in parliament 22 *Ed.* 3. *nu.* 17. that remedy might be found, that no accountant in the exchequer do run in iſſues before he be warned. The king's anſwer was, the proceſs therein ſhall be firſt a *venire facias*, then a *diſtringas*, and after a writ out of the chancery to the treaſurer and barons.

The juſtice of the court hath of late years quickened the plaintiff's relief by enlarging the iſſues after the return of the firſt *diſtringas*, which is now compleatly eſtabliſhed by the rule, and ſome late determinations of the court, as follow:

By application to the court.

In *Trin.* 1753. "It is ordered, that where "iſſues ſhall be obtained upon any writ of *di-* "*ſtringas* to be iſſued out of this court, the "plaintiff in ſuch writ may immediately after "the return thereof apply by motion to the "court for encreaſing iſſues upon further pro- "ceſs to be iſſued between the parties, which "ſaid iſſues ſhall be encreaſed from time to "time at the diſcretion of the court."

Affidavit of the debt requiſite to inform the court what enlargement of the iſſues may be made.

It is uſual where the debt is large, and indeed is expected by the court in all caſes, that an affidavit of the debt be made, and though it was not made part of the rule, but left open to the diſcretion of the court as aboveſaid, yet the chief baron when this rule was made, was pleaſed to expreſs his ſentiments upon the occaſion

caſion, that he ſhould in general expect an affidavit to inform the court what the debt is, that they may enlarge the iſſues accordingly.

And in caſes where the privileges of parliament might interfere, the court has in ſeveral inſtances ordered the amount of the debt in iſſues on an affidavit of the debt being read.

Of the *capias ad reſpondendum.*

Capias ad reſpondend'.

If the ſheriff returns a *nichil habet* on the *venire facias* a *capias ad reſpondendum* iſſues, or if the defendant has nothing in the county whereby the ſheriff can return iſſues on the *diſtringas*, he muſt return in like manner a *nichil habet* on that writ, whereupon or upon iſſues returned on the laſt *diſtringas*, further iſſues may be had in a different county by a *teſtatum diſtringas* which may iſſue into that other county, and ſo repeated as above, for which the ſolicitor pays 1*s.* additional to the 6*s.* 2*d.* making 7*s.* 2*d.* for the *teſtatum* on account of the length thereof, a copy of which will be found in the appendix; but if no further iſſues can be had any where, a writ of *capias* may alſo be iſſued on the return of *nichil habet* on the *teſtatum diſtringas*, for the form of which *capias*, ſee appendix.

Teſtatum diſtringas.

Capias now only uſed as a writ of privilege.

This writ of *capias* is an original writ of very antient date, but now only uſed as a writ of privilege for the officers of the court and accountants.

Als. pluries & teſtat. caps.

The ſheriff having returned on the *capias non eſt invent.* an *alias* and *pluries*, and further writs of *capias* are awarded, and ſhould defendants remove into another county a *teſtatum capias* may iſſue, but the writ of *quo minus* anſwers almoſt every purpoſe of the *capias*, and conſequently

ſequently is now almoſt generally uſed inſtead thereof, as it requires, either perſonal ſervice or an arreſt, in like manner as a *capias* would, of which for further information you are referred to the deſcriptive part of the writ of *quo minus*, which in the old writings is frequently called a *capias quo minus*.

Of iſſues, fines and amerciaments, what and how they are to be eſtreated.

The iſſues are to be eſtreated into a roll.

If the defendant ſtill continues in contempt, and the ſheriff has raiſed iſſues as before ſet forth, ſufficient to ſatisfy the plaintiff's demands, thoſe iſſues are eſtreated into a roll, the form whereof is inſerted in the appendix.

And ſent to the clerk of the eſtreats for proceſs thereupon to levy them.

The roll is ſent to the clerk of the eſtreats to be tranſcribed into his remembrance roll there, in order to make out proceſs thereupon for the levying the ſame for the king.

The plaintiff may apply to the treaſury by petition for the ſheriffs paying the money to him.

When ſo levied, the plaintiff may apply to the lords of the treaſury by petition, praying that the money may be paid over to him, which petition is referred from the treaſury to their ſolicitor, who, on affidavit made of what is due to the plaintiff, makes his report thereof to the treaſury, and thereupon a warrant from the king is made out and counterſigned by the lords of the treaſury for the attorney general to conſent to the ſheriff's paying the iſſues to the plaintiff.

But regard muſt be had that the iſſues maybe enough to pay coſts.

But care in this caſe muſt firſt be taken that there be ſufficient iſſues raiſed to ſatisfy at leaſt the coſts of the application, which being great you will find in the appendix, together with the form of the petition.

Of

Of Fines.

Mr. *Maddox*, in his twelfth chapter, treating of fines touching law proceedings, ſays, a conſiderable revenue accrued to the crown by the fines which were paid (before the time of *magna charta*) on account of proceedings at law, which he reduces to theſe heads: 1. Fines to have juſtice and right. 2. Fines for writs, pleas, trials and judgments. 3. For expedition or diſpatch of pleas, trials and judgments. 4. For ſurceaſement or delay thereof. 5. The fines payable out of the debts to be recovered. And he enumerates variety of inſtances in each caſe, which prove ſufficiently that there was an *officium placitorum*. He concludes as follows: We have ſeen above, that ſome men uſed to pay fines, to have or obtain juſtice or right; others, to have their right, or their proceedings or judgments ſpeeded; others, for ſtopping or delaying of proceedings at law; and that others were obliged to pay great and exceſſive fines, (*viz.* a fourth part, a third part, or half of the debt they ſued for) to obtain juſtice and right according to their ſeveral caſes: ſo that the king ſeemed to ſell juſtice or right to ſome, and to delay or deny it to others. Againſt theſe miſchiefs a remedy was provided by a clauſe in the Great Charter of liberties, made by king *John* and king *Henry* the Third. That clauſe in each of thoſe charters runs in the ſame or conſonant words, which are theſe, *Nulli vendemus, nulli negabimus aut differemus rectum vel juſtitiam.* Here we may obſerve three emphatical words, *vendemus*, *negabimus* and *differemus*. By *nulli vendemus* were excluded the exceſſive high fines;

Of fines before Magna Charta, and there ever was till that reduced them.

by *nulli negabimus*, the ſtopping of ſuits or proceedings, and the denial of writs; by *nulli differemus*, ſuch delays as were before wont to be occaſioned by the counterfines of defendants, (who ſometimes would outbid the plaintiffs), or by the prince's will. And this clauſe in the Great Charters ſeems to have had its effect: for though fines for writs and proceſs of law in many caſes were always a part of the crown revenue, (*viz.* from the time of the Conqueſt, or ſoon after) and were conſtantly paid, as well after the making of the great charters as before: yet, if my obſervation does not fail me, the fines which were paid for writs and proceſs of law were more moderate after the making of thoſe great charters than they uſed to be before; and, I think, the actual denial of right, and the ſtopping and delaying of it, which before, upon paying of money or fines, uſed to be practiſed, were by thoſe charters quite taken away, or by degrees brought into diſuſe.

All fines are entered on the roll, and eſtreated in like manner as the amerciaments for proceſs to iſſue thereupon.

A perſon committed to the Fleet for a raſure in a writ.

A fine was impoſed by the court for a raſure of a writ, and the actor committed to the *Fleet*. *Eaſter* 1 *Ric.* 2. *in Offic' plit'. MS.*

A perſon diſcharged of a fine quod non eſt eadem perſona ſuper quam, &c.

Walter Harewell pleaded in diſcharge of a fine, whereof he was diſtrained by the ſheriff by a ſummons of the exchequer, *q'd non eſt eadem perſona ſuper quam finis impoſit' fuit in offic' plit'. MS.* 30 *Ed.* 3.

Fines, amerciaments and iſſues once totted, the party becomes debtor to the

Nota per cur', It is the conſtant practice of the exchequer, that if fines, amerciaments, and the iſſues of jurors are once totted, the party becomes thereby a debtor to the ſheriff, and the ſheriff

ſheriff to the king; and he muſt anſwer for them, though he cannot levy them of the party. *Hard.* 224. *Hil.* 13 & 14 *Car.* 2. *in ſcio.*

ſheriff, and the ſheriff to the king, to whom the ſheriff muſt anſwer for them, though he cannot levy them.

Of amerciaments.

Mr. *Madox*, in his fourteenth chapter, treating of amerciaments, ſays, It frequently falls out, that in the antient times amerciaments are hardly to be diſtinguiſhed from fines by a nice obſerver. But (adds he) It is likely there was ſome difference between a *miſericordia* and an amerciament. For example, it was called an amerciament after it was reduced to a certain ſum; and a *miſericordia*, both before and afterwards, as in the caſe of *Bonefoi* the Jew; he was put in *miſericordia* for a novel diſſeiſin, and afterwards fined in a mark of gold, for reſpite to be amerced thereupon before the king himſelf. *Mag. Rol.* 30 *H.* 2. *Rot.* 5. *b.* There are great numbers of amerciaments both in criminal and common pleas put in charge in the revenue rolls, which are only in general terms *de miſericcordia*, without expreſſing for what cauſe the amerciament was impoſed.

Amerciaments what, and wherein they differ from fines.

The ſheriffs of *London* were amerced *pro non Hen'do corpus ſuper cepi corpus retorn'* Trin. 31 Hen. 6.

The ſheriff amerced for not having the body on a cepi returned and amerced for a falſe return on fi' fa';

Vic' amerc' pro f'lo retorn' ſuper fi' fa' eo q'd retorn' mandavi balliv' lib'tat' &c. Ubi nulla t'lis lib'tas ſicut in com' ſuo prout per aliquod recordum ſccii. liquere potuit & pro eo q'd d'to vic. preceden' ejuſdem com' fuer' inde exa'iat' per barones. Trin. 31 Hen. 6.

In the ſame term an amerciament was ſet upon the ſheriff of *Lincoln* for not returning a *Quo minus ad diem retorn' ejuſdem br'is.*

and for not returning the writ at the day of the return.

Fines and amerciaments how eſtreated.

Proceedings by fines and amerciaments ſeem now out of uſe; but when ſuch there be, they ought not to be any ways diſcharged but by way of mitigation, and compounding with the barons of the court in caſe they are entered upon the roll, in the form to be met with in the Appendix; which roll is ſent to the Pipe office, and there tranſcribed into the great roll; which being done, the roll from the Office of Pleas is carried back and filed, and the clerk of the Pipe makes out the proceſs.

After the amerciament is eſtreated, as above, if the parties agree, the ſheriff may, if the amerciament exceeds 5*l.* compound it by the allowance of any one of the barons of the court, who have power to mitigate the ſame upon juſt allegations, and to reduce them to what reaſonable ſum they in their diſcretion ſhall think fit.

Method of application to compound it.

The method of application is thus; An attorney in the office of pleas makes an office copy of the amerciament from the roll, and under that copy alleges the reaſon which may induce a baron of the court to mitigate the ſum; which copy and reaſons are preſented to the baron, who ſets down the mitigation, and ſubſcribes his hand thereto, which the attorney receives from the baron for his warrant to make an entry thereof upon the roll. The compoſition roll is thereupon carried to the Pipe office, and an entry made of it there alſo; and on payment of the ſum mitigated, and diſcharging the fees of office, the ſheriff will have his diſcharge from the Pipe office.

The forms of the entries of the iſſues, fines and amerciaments, are introduced into the Appendix, in their old dreſs, to ſhew the variety of them, which are ſcarce to be met with now.

Of

Of the writ of Quo minus.

The ſecond proceſs iſſuing out of the office of pleas is the writ called a *Quo minus*, the form of which was in antient times very variable. During the whole reign of king *Edward* the Firſt, this writ was uniformly in theſe words; *Ad reſpondend' A. B. de —— in partem ſolutionis deb'orum que debet regi.* In the 22d year of the reign of *Edward* the Second, it varied as follows; *Quo minus d'nus rex debita in quibus pred'cus Thomas ei tenebatur die quo obiit percipere poteſt* and *Quo minus executionem pred'ci precepti regis facere potuer'*; and *Quo minus rex percipere poteſt debita in quibus d'cus Ric'us ei tenebatur in regis contempt' & d'ci quer'.* The Quo m's. The antient forms thereof.

In 37 *Edw.* 3. on the file of writs of Eaſt. in *Somers*, the *Quo minus* varied thus; *Quo minus pred'cus quer' de extenta pred'ca nobis ſatisfac' val. ut debet ad grave dampnum ipſius quer', &c.* And on the file of writs of *Trin.* following, they varied as follows; *Pro Joh'e de Bolton cli'co nuper Camerar' ville Berwici Quo minus idem my'r Joh'es nobis ſatisfacere valeat de diverſis deb'is que nobis debet ad d'cum ſcc'ium n'rum ex diverſis cauſis.* And, *Pro executoribus ducis Lancaſtriæ. Quo minus iidem executores nobis de deb'is que pred'cus dux nobis debuit die quo obiit ſatisfacere valeant.* And *pro Priore de novo mercato firmar' ejuſdem priorat' Quo minus idem Prior nobis ſatisfacere val' de deb'is que nobis debet ad d'cum ſcc'ium n'rum de arrerag' firme prioratus pred'ci.* And *pro Jo. Laundels fil' & hæres Jo. Laundels nuper coronatoris Mareſchalſie & cl'ici mercat' hoſpitii n'ri Quo minus Idem Joh'es nobis ſatisfacere poterit de deb'is in quibus*

nobis

nobis tenetur ad ſcc'ium pred'cum de rem' comp'i ſui nuper ad d'cum ſcc'ium reddit' pro pred'co Joh'e pre' de officio coron' et mercati pred'corum. And *pro Priore de Kirkby Quo minus idem Prior nobis de deb'is que nobis debet de arrerag' firme terr' ten' poſſeſſion' bon' & catal' ad abbi'am ſa' Nich'i Andeg' in Angl' ſpectan' ſatisfacere valeat.*

In *Mich.* 1 *Ric.* 2. *inter Hall & Redſton*, in an action of debt upon an obligation *quo minus* the plaintiff *deb'a ſolvere &c.* and many others in the ſame term.

And in the reign of *Edw.* 4. it varied thus, *Quo minus pred'cus quer' nobis ſatisfacere valeat de deb'is & comp'is in quibus nobis tenetur ad d'cum ſcc'ium n'rum.*

Antient accounts of the Quo minus.

Collections taken out of the year books and other old printed law books concerning the *quo minus.*

The meſne farmer may have ſuit by quo minus;

In *Mich.* 2 *Hen.* 4. *fo.* 7. and *Hil.* 8 *Hen.* 5. *fo.* 6. *ſuit tenus que moigne que eſt fermour le roy puit aver ſuite in leſcheq; per quo minus noſmant luy meſme fermour pur choſes concernants ſon ferme & ſi'l rende rent al Roy, mes ſe ſont graunt ſoit abſque aliquo inde reddendo donque ſon graunt ſembloit void. Hil.* 7 *Ed.* 4. *fo.* 30. *Vide Theloall, fo.* 17.

and ſo may a feme covert, being the king's farmer, though her huſband be in exile.

Moigne profeſſe fermour le roy ou feme covert fermour le roy ſon baron exile poet ſuer al comon ley in leſchequer & hic videtur per quo minus car le Moigne ſuit miſe al excheq; Vide Brooke in title De quo minus.

The meſne tenant of a prior alien may alſo ſue by quo m's in his own name.

Le roy aver graunt les temporalities d'un prior alien a un moigne rendaunt rent & d'accompter in leſchequer & le moigne mainteyne brefe de dett in ſon noſme demeſne ſans ſon abbe vers ſon dettour in leſchequer quo minus deb'm ſuum regi ſolvere non potuit Et bene maynteynable. Vide Fitzh. title Nonability 29.

Si

Si moigne fermour le roy ſoit impled' pur le dett le roy & l' abbe nient noſme le ſuit abatera ſi le moigne ne ſoit noſme fermour le roy & ſi ſic tunc bene & tiel fermour poet aver quo minus vers ſon dettour. Vide title Nonability in Fitzh. 18.

Un priorˆ fermour le roy fuit appele in leſchequer ad reſponder al roy de ſon dett il dit que J. S. fuit indebted a luy ſine que il ne poet ſatisfier al roy & pria proces vers luy & h'uit & il fuit agard de reſponder. In 38 *Aſſ. p.* 20.

The prior being farmer may alſo have the like ſuit by the ſuggeſtion that he is leſs able.

Quo minus giſt in leſchequer pur ceſti qui eſt indebted al roy vers l'executors de ſon dettor ſur ſimple contract per comon uſage per Davers. Vide Brook, title de quo minus.

Debtor le roy poet aver quo minus pur ſon proper debt pur payer le roy mes il ne poet aver quo del dett qui eſt due a luy come executor al auter car le roy ne poet aver ent execuc'on pur ſon dett. Vide Fitzh. tit. Bref. 891.

Fuit agree pur ley que home ne gagera ſon ley in quo minus in Mich. 34 *Hen.* 6. *& ſic dictum fuit pro lege tempore regis Hen.* 8. *concordat T. Ley in Fitz.* 10 *Edw.* 3.

Dettor le roy port quo minus in ſcc'io ſur contract & le def. fuit ouſté de ſon ley pur l'advantage le roy. Vide Brooke, tit. Quo minus.

Si un home ſoit en det a moy ſur ſimple contract & devy ceo ay nul remedy per le common ley vers les executors mes ceo avera quo minus in leſchequer ſuppoſant que ceo ſue en dett al roy, & que il doit a moy tant que eſt lour teſtator quo minus deb'a recuſat ſolvere per davers & comon uſe. Trin. 11 *H.* 7.

Ejectione firmæ per Garway dettor le roy vers Ric'm ap Thomas pur terr' in Anglic' in North Gales ſue in leſchequer maint' icy ſivien' come pur intruſion' ſera pur le roy del terres in Gales & le cauſe fuit pur ceo que le roy avera execution' del choſe & damages

mages recover in le quo minus in ſatisfaction de dett que le plt' doit au roy & ſic le plt' in le quo minus eſt participant del prerogative le roy. Com. 208.

Le brief de quo minus eſt touts foits pur l'advantage del roy ſcil't al intent que il port eſtre niceulx reſponde & pay de ſon ferme pro que la court doit aider & favor le fermour in le conveyance del title & reverſion' al' roy. Dyer, *fo.* 174.

Si moigne ou auter religious home ſoit fermour noſtr' ſeigniour le roy & il fait vendition ou bargain del choſe concernant ſon ferme tiel vend ou bargain eſt bone et ſur ceo il avera Quo minus envers le vendee ou bargainee in leſchequer. Perkins, *Grants* 5.

The king's farmer or debtor may ſue another for debt or treſpaſs by quo min', ſurmiſes that by the tort the plaintiff is leſs able to pay the king.

Aſcun fermour ou debtor al roy avera un' brief de quo minus en le exchequer in le office del plees vers un auter pur debt ou treſpaſs per que le plt' ſurmittere que pur le tort que le deft' fait a luy il eſt memes able a payer le roy ſon debt ou ferme quel eſt ſurmiſe a doner juriſdiction' al' court d' exchequer d'oyer & terminer la cauſe del ſuit enter eux quel auterment ſerroit determine en auter court. Termes *del Ley, tit. Quo minus.*

A *Quo minus* lieth for the king's fermor in the exchequer againſt him to whom he ſelleth any thing by way of bargain, touching his farm; for he ſuppoſeth, that by the breach of the vendee, he is diſabled to pay the king his rent. *Cowell's Inſtitutes*, title *Quo minus.*

How directed and returnable.

This writ is directed to the ſheriff, and is made returnable either on a return day, as in the common pleas, or upon a day certain; and the form it now bears may be ſeen in the Appendix. The ſolicitor pays for this writ 6*s.* 2*d.* and adds to it his fee of 6*s.* 8*d.*

Its uſe.

The uſe of this writ is, where the perſon of the defendant is to be found, either to arreſt him or to require his appearance in court; and

in

in cases where no arrest is intended, the statute of 5 *Geo.* 2. *cap.* 27. requires an *English* notice to be underwrote, which, for greater certainty, is transcribed in the Appendix. Personal service of the writ, and notice or a copy thereof, is also in this case required by the same statute; which service must be within the county to which the writ is directed; and it is advisable, if a copy is served, to shew the writ under seal, though the statute is silent as to this particular.

How served according to the statute.

Process against baron and feme, if the baron only is served it will be good service, though the appearance is entered for both by the plaintiff, according to this statute; it is not necessary to serve the wife: if the process be against two executors, both must be served.

Service on the husband sufficient if against the man and his wife.

If against two executors, both must be served.

In the counties palatine, where the directions of the writ is to the chancellor of *Lancaster*, the chamberlain of *Chester*, or bishop or *Durham*, and not to the sheriff of either, (all of whom receive their power by mandates from the chamberlain, chancellor and bishop respectively, in cases of arrests); and, where the process is not bailable, the defendant must not be served by the mandate, but by the writ; for it has been determined by all the courts of *Westminster-Hall*, that the process to be served is the process out of the superior court, conformable to the said statute of 5 *Geo.* 2. *cap.* 27.

Where the writ is directed to a county palatine the writ must be served, and not the mandate to the sheriff.

The defendant being served must appear on the return day, or within eight days after; or in default thereof, upon affidavit of the personal service (the form of which see in the Appendix) being made and filed, the plaintiff may enter an appearance for the defendant, and proceed

When defendant must appear, or plaintiff may enter his appearance for him.

ceed thereon as if ſuch defendant had entered his appearance.

If attorney undertakes to appear, the court will make him.

Where an attorney undertakes to appear, the court will oblige him to do it in all events, provided the undertaking be in writing, but not otherwiſe.

Where defendant is an infant, and has no guardian, the court will give plaintiff leave to name one.

Stone againſt *Atwoll.* By the 12 of *Geo.* 1. *c.* 29. If the defendant does not file common bail in time, the plaintiff may do it for him. In this caſe the defendant was an infant, and had appointed no guardian by whom to appear; and the court made a rule, that the plaintiff ſhould name a guardian for him, if he refuſed to do it himſelf. *Str.* 1076.

The ſolicitor pays for his appearance 6*s.* and adds his own fee of 3*s.* 4*d.* and for the ſervice he is fixed by the ſtatute to 5*s.* and for the affidavit he charges 4*s.* 8*d.*

Concerning arreſts, and of putting in bail to the ſheriff, and who are exempted from arreſts.

What is neceſſary previous to an arreſt.

Where the intent of the plaintiff is to arreſt the defendant, and get bail for better ſecurity, an affidavit muſt firſt be made under the direction of the ſeveral acts of parliament hereafter mentioned; which affidavit muſt ſpecify the cauſe of action and quantum of the debt, and be ſworn before one of the barons, or before the maſter of the office or his deputy; or, if in the country, before a commiſſioner appointed by the chief barons, with the allowance of one other of the barons, for taking affidavits in this court. The ſum ſpecified muſt be indorſed on the back of the proceſs, and for which ſum the ſheriff is to take bail, and for no more.

The

The reaſon why it is called bail is, becauſe by this means the party reſtrained is delivered into the hands of thoſe that bind themſelves for his forthcoming, in order to a ſafe keeping or protection from priſon; and the end of bail is, to ſatisfy the condemnation and coſts, or render the defendant to priſon. Why bail is ſo called.

By 12 *Geo.* 1. *cap.* 29. it is enacted, That where the cauſe of action ſhall not amount to the ſum of ten pounds in a ſuperior court, the plaintiff ſhall only perſonally ſerve the defendant with a copy of the proceſs, and ſhall not arreſt his perſon; and that in all caſes where the plaintiff's cauſe of action ſhall amount to the above ſum or upwards, and he is minded to arreſt the defendant, affidavit ſhall be made and filed of ſuch cauſe of action, and the ſum or ſums ſpecified in ſuch affidavit ſhall be indorſed on the back of ſuch writ or proceſs; for which ſum or ſums ſo indorſed, the ſheriff or other officer ſhall take bail, and for no more. No arreſt under 10 l. in a ſuperior court.

This act does not ſuperſede the act of 11 & 12 *Will.* 3. *cap.* 9. which requires affidavits of 20 *l.* debt and upwards in *Wales*, and the counties palatine of *Cheſter*, *Lancaſter* and *Durham*. Not under 20 l. in Wales & the counties palatine.

In *Smith* againſt *Dudley*, *Mich.* 12 *Geo.* 2. ſpecial bail was taken for 12 *l.* upon proceſs into *Lancaſhire*; and upon a motion for common bail, it was inſiſted that the above mentioned act of 12 *Geo.* 1. having only an exception of *Scotland*, was intended to extend to all other places, and conſequently was a virtual repeal of 11 & 12 *Will.* 3. *Sed per curiam*, They are not inconſiſtent, for 12 *Geo.* 1. does not ſay, you ſhall have bail for 10 *l.* but that you ſhall not have bail under 10 *l.* whereas in 11 & 12 *W.* 3. there

there are negative words; and the oath here being only to 12 *l.* the plaintiff was not intitled to ſpecial bail, and the rule for common bail muſt be abſolute. *Strange* 1102.

No declaration delivered to priſoner in the Fleet ſhall detain him or hold him to bail, unleſs an affidavit be made that the cauſe of action is for 10 l. or upwards, and an indorſement thereof made on the declaration.

Trin. 1753. It is ordered, "That no copy "of a declaration delivered at the *Fleet* priſon "againſt any priſoner there, ſhall be a ſufficient "charge to hold ſuch priſoner to bail, or to "detain ſuch priſoner in cuſtody for want of "bail, unleſs an affidavit that the plaintiff's "cauſe of action amounts to ten pounds or up-"wards be firſt made and filed in the office of "pleas, and an indorſement made by the plain-"tiff's attorney or clerk in court upon ſuch "copy of a declaration, ſignifying the ſum of "money ſpecified in ſuch affidavit, for which "ſum ſo indorſed bail ſhall be required, and "for no more."

Not on any judgment whereof the coſts muſt be added to make up thoſe ſums.

No perſons ought to be arreſted in an action of debt upon a judgment, unleſs the debt or damages, without coſts, amount to 20 *l.* in *Wales* and the counties palatine, and ten pounds every where elſe, as aboveſaid, and againſt ſeamen in the king's ſervice, as hereafter mentioned.

No arreſt on penal ſtatutes nor covenant, (but for payment of money), nor againſt bail, nor in treſpaſs, battery, falſe impriſonment, privilege nor ſlander;

No perſons ought to be arreſted in actions upon penal ſtatutes, nor in covenant, unleſs by rule of court, or the covenant be for payment of money; nor in actions againſt bail on the bail bond, nor in treſpaſs, battery, wounding, falſe impriſonment, privilege, ſlander or title, unleſs by order of court, or warrant from a baron, which ought to be founded on an affidavit that the cauſe of action amounts to ten pounds or more.

A de-

A defendant lawfully diſcharged from an arreſt ſhall not be again arreſted at the ſame time, at the ſuit of the ſame plaintiff, nor at any other time for the ſame thing, either by meſne proceſs or execution. nor after an arreſt for the ſame thing.

No peers or peereſſes of *Great Britain*, nor their ſervants, nor members of parliament and of the convocation, nor their ſervants, during the time of parliament or convocation, and for certain days before and after; nor ambaſſadors nor their ſervants, nor bodies corporate, nor the king's ſervants, (without leave from the lord chamberlain), nor the lord mayor of *London*, nor perſons attending upon any of the king's courts at *Weſtminſter* upon any buſineſs there, ſhall be arreſted. Who are privileged from arreſt.

But by 12 & 13 *Will.* 3. *cap.* 3. and 11 *Geo.* 2. *cap.* 24. "A ſuit, in any court of record or "equity, may be commenced againſt a peer, "member of the houſe of commons, or their "menial or other ſervants, or any other per- "ſons intitled to the privilege of parliament, "at any time immediately after the diſſolution "or prorogation of parliament, until a new par- "liament meets, or the ſame be re-aſſembled; "and immediately after any adjournment of both "houſes of parliament for above 14 days, until "both houſes ſhall meet or re-aſſemble; and if "any perſon have cauſe of action or complaint "againſt a peer, after ſuch diſſolution, prorogation or adjournment as aforeſaid, he may "have ſuch proceſs out of the king's bench, "common pleas and exchequer, againſt ſuch "peer, as he might have had againſt him out "of time of privilege, and againſt any knight, "citizen or burgeſs, or other perſon intitled to "privilege of parliament, after diſſolution, prorogation Suits may be commenced after a prorogation or adjournment of 14 days, till the parliament is re aſſembled. After a diſſolution, peers and members, and their ſervants, may be ſued, but their perſons are free from arreſts.

" rogation or adjournment, as aforeſaid, by " ſummons and diſtreſs infinite thereupon, or " by original, bill and ſummons, attachment " and diſtreſs infinite, until they enter a com- " mon appearance or file common bail, accord- " ing to the courſe of each reſpective court; " and any perſon in the times aforeſaid may " exhibit a bill againſt any peer, member of " parliament, or other perſon having privilege " as aforeſaid, in the chancery, exchequer, or " duchy court of *Lancaſter*, and proceed there- " upon, by letter or ſubpœna, as is uſual; and " upon leaving a copy of the bill with the de- " fendant, or at his laſt place of abode, may " proceed thereon; and for want of appearance " or anſwer, or for non-performance of any order " or decree, may ſequeſter the eſtate of the

If ſtayed by privilege, plaintiff may proceed to ſave the ſtatute, notwithſtanding his privilege.

" party, but ſhall not arreſt the body; and " where a plaintiff is ſtayed by privilege of par- " liament, he ſhall not be barred by the ſtatute " of limitation; and no ſuit againſt the king's " original and immediate debtor, or againſt any " perſon liable to render an account to his maje- " ſty, his heirs or ſucceſſors, for any part of his re- " venues, or other original and immediate duty, " or the execution of ſuch proceſs, ſhall be im- " peached or delayed by privilege of parlia- " ment; yet ſo that the perſon of ſuch debtor " being a peer, ſhall not be arreſted, or being " a member of the houſe of commons, ſhall " not be arreſted during his privilege."

King's immediate debtors may proceed, notwithſtanding privilege, ſo as the perſons of peers and members, during their ſittings, be not arreſted.

No powers to hold plea in any real or mixt action, otherwiſe than before this act.

And by 11 *Geo.* 2. *cap.* 24. *ſect.* 5. it is enacted, " That nothing herein contained ſhall ex- " tend to give any juriſdiction, power or autho- " rity, to any court to hold plea in any real or " mixt action, in any other manner than ſuch " court

" court might have done before the making " that act."

Since the union act in the reign of queen *Ann*, the ſixteen *Scotch* peers have privilege both of peerage and of parliament; and the reſt of the *Scotch* peers and peereſſes have privilege of peerage, though not of parliament; and their perſons are all ſacred from arreſts, as well in *England* as *Scotlond*; though ſuch of them as are not of the ſixteen are liable to be ſued, as well during the ſittings as the receſs of parliament, by the writ of *Venire facias ad reſpondendum* hereafter mentioned.

The ſixteen Scotch peers have privilege of peerage and parliament.

The other Scotch peers have privilege of peerage, but not of parliament.

The peers and peereſſes of *Ireland* have no privilege, either of peerage or of parliament, unleſs any ſuch be members of either houſe of the parliament of *Great Britain*.

The Iriſh peers have neither privilege of peerage nor of parliament, except they be members of parliament.

An heir, executor or adminiſtrator, as ſuch, cannot be arreſted; nor can a bankrupt, in going and coming to ſurrender to the commiſſioners, or during his actual ſurrender for 42 days, or ſuch further time as ſhall be allowed to finiſh his examination, provided he was not in cuſtody at the time of the ſurrender.

Heirs, executors and adminiſtrators, and bankrupts, freed from arreſts.

Perſons who liſt themſelves to ſerve on board any ſhip of war, ſhall not be taken out of the ſervice by any proceſs or execution, (except for criminal matters) unleſs for a real debt, or other juſt cauſe of action amounting to 20 *l.* of which affidavit muſt be made before a judge of the court, or ſome perſon authorized to take affidavit, a memorandum of which oath to be marked on the writ, and for which no fee to be taken. *Stat.* 2 *Geo.* 2. *cap.* 14. 31 *Geo.* 2. *cap.* 10.

Seamen in the king's ſervice cannot be arreſted under 20 l.

If ſpecial bail is required upon a dangerous aſſault and battery, an affidavit being firſt made

How to arreſt for aſſault and battery.

of the facts, a baron at his chambers will make an order for holding the defendant to bail in ſuch ſum as on the circumſtances of the caſe he ſhall think reaſonable; the form of this and divers other affidavits of debt to hold to ſpecial bail, will be found in the Appendix.

The plaintiff's attorney's name muſt be ſubſcribed or indorſed on the writ, and day when writ iſſued.

The attorney's name who ſues out the writ muſt be ſubſcribed or indorſed thereon; and the day and year when it was ſued out muſt alſo be ſet down, in caſe the writ required bail.

No arreſt in debt on a judgment, if the original debt was not 20l. in Wales & counties palatine, & 10l. elſewhere.

No ſpecial bail ought to be in debt on a judgment, unleſs the debt or damages, without coſts, amount to 20 *l.* or upwards, in *Wales* and the counties palatine, and againſt ſeamen in the king's ſervice, and to ten pounds or upwards elſewhere; for the addition of coſts will not warrant the holding to bail on ſuch action, where the original debt does not require bail. *Stra.* 975.

nor in covenant, but for payment of money, or by rule of court;

Nor in covenant, unleſs a rule of court can be obtained, or the covenant be for payment of money.

nor on bail bond, penal ſtatute, &c.

Neither can a defendant be held to bail on an action upon a bail bond, or a penal ſtatute, or for a battery, falſe impriſonment, privilege or ſlander of title, unleſs by ſpecial motion and order as aforeſaid.

Agreeable to the old rule.

To the above purpoſe were the old rules, by which it was ordered, "That in all actions of "battery, conſpiracy, falſe impriſonment, ac- "tion upon the caſe for ſlander, (except of a "title), no ſpecial bail ſhall be requirable "withont ſpecial motion and order; and that "ſpecial bail be not requirable in caſes of pri-

" vilege (except for fees and diſburſements as " an attorney or ſworn clerk.)"

The privilege for fees was taken away by ſtatute of 12 *Geo.* 1. and therefore that exception is at an end; but, in ſuch caſes, the ſpecial motion muſt be on affidavit of the debt being firſt made.

Privilege for fees taken away by ſtatute.

The plaintiff made an affidavit that the defendant was indebted to him in 40 *l.* without ſhewing his cauſe of action, and had a writ indorſed for bail for 40 *l.* but before any warrant thereon, plaintiff made a proper affidavit: *Per cur'*, Though it may be regular in the courſe of things to file an affidavit before proceſs ſued out, yet it can never be intended as the ground of the proceſs, but the arreſt only; and here being a proper affidavit made before any warrant was taken out, defendant was ordered to put in ſpecial bail. *Hil.* 4 *Geo.* 2. *Hodhouſe* againſt *Hanſell.*

A defective affidavit of debt may be ſupplied by another before warrant iſſues.

An old affidavit is not ſufficient to hold to bail. In *Collier* againſt *Hague*, *Trin.* 21 *Geo.* 2. the plaintiff on going beyond ſea made affidavit 4 *July* 1744, that the defendant was indebted to him in 277 *l.* 16 *s.* 6 *d.* for goods ſold and delivered. In this affidavit proceſs was taken out 9th *May* 1747, and marked for bail: but the court ordered defendant to be diſcharged on common bail; for though he owed ſo much in 1744, he might not owe it in 1747, and the act requires an oath of a ſubſiſting debt at the time of ſuing out the proceſs. *Str.* 1270.

Defendant cannot be held to bail on an old affidavit.

In *Catlin* againſt *Catlin* it was held, that upon a proper affidavit the writ may be marked for bail in *trover*, without an order of court or of a judge at his chambers; for it is more an

Special bail may be in trover without an order.

action of property than of a tort. *Str.* 1192. 6 *Mod.* 14. *Trin.* 11 *Geo.* 2. *Pitts* againſt *Millar* in *B. R.*

If baron and feme be arreſted, ſhe ſhall be diſcharged.

If baron and feme are arreſted for the debt of the feme *dum ſola*; the court will diſcharge the feme, and continue the baron under the arreſt till he puts in bail for both. *Str.* 1272. *Howell* qui tam againſt *Jones.* 1 *Leo.* 51, 216. and 1 *Ven.* 49. denied to be law.

If feme only arreſted, her appearance being entered, ſhe may be ſuperſeded; if baron arreſted he ſhall put in bail for both.

But if proceſs be ſued out againſt baron and feme, and the feme only is arreſted, ſhe ſhall not be compelled to put in bail for the baron, but may enter an appearance for herſelf and have a *ſuperſedeas*; but if the baron only be arreſted, he ſhall put in bail for the feme as well as for himſelf.

Sheriff may take bail bond or carry defendant to gaol.

The writ being indorſed with the ſum ſworn to and delivered to the ſheriff, he grants his warrant to his bailiff, who having thereupon arreſted the defendant, he either diſcharges him on his entering into a bail bond to appear at the return of the writ, or carries him to gaol, in like manner as on a *latitat* or *capias* requiring bail in the other courts.

Upon reſcous returned an attachment ordered without a rule to ſhew cauſe.

Upon the return of a reſcous, the court upon motion for an attachment will make it abſolute at firſt, as againſt thoſe mentioned in the return. *Williams* againſt *Evans*, 12 *Nov.* 1724. *Bunb.* 181.

If on cepi returned a rule may be had to bring in the body.

If on a *cepi corpus* no bail is returned, a rule will be made out to bring in the defendant's body, though a defendant with leave of the court may depoſit money in court, inſtead of bail; and in ſuch caſe the plaintiff ſhall be ordered to waive other bail. *Lil. Abr. Trin.* 23 *Car. B. R.*

Money lodged in court inſtead of bail, good.

If

If the ſheriff returns, that the defendant *non eſt invent'* in his bailiwick when he had really arreſted him, an action may be brought againſt him for a falſe return.

If ſheriff returns non eſt invent' when he had arreſted defendant, action may be brought againſt him for a falſe return.

If nothing is done on the firſt *quo minus*, an *alias*, *pluries*, and further proceſs of *quo minus* iſſue in ſucceſſion till the defendant is arreſted, and the only alteration in the writs are (we command you as before) (we command you as often before) without further variations. The ſolicitor pays for the *alias* and *pluries*, *&c.* 4*s.* 8*d.* each, and adds his fees to each writ 6*s.* 8*d.*

Order that the ſheriff take only 4 d. for each warrant in the home counties.

Trin. 12 *W.* 3. "*Ordinat' eſt qd. ſub vic. Com'* "*Surr'*, *Com' Eſſex*, *Com' Kanc'*, *Com' Suſſex*, "*Com' Midd. and Com' Hertf. facient Warrant'* "*ſuper proceſs hujus cur' & recipient tantum qua-* "*tuor denar' pro quolibet nomine defend. in pred'co* "*proceſs mentionat.*"

Sheriff to return the writ, or be attached.

When the defendant is arreſted, if the ſheriff ſhould be called upon to return the writ, and ſhould neglect or refuſe to do it, the plaintiff's attorney, inſtead of giving a rule to amerce the ſheriff as was heretofore the practice, takes a much ſhorter method by a late rule of court; namely;

Hil. 19 *Geo.* 2. It is ordered by the court, "that for the future, inſtead of a rule of "amercement to be ſerved upon any ſheriff, "officer, or other perſon having return of pro- "ceſs to be iſſued out of the office of pleas, "there ſhall be ſerved upon ſuch ſheriff, offi- "cer, or other perſon having return of pro- "ceſs, a peremptory rule requiring him or "them to return ſuch proceſs within ſix days "after notice thereof to be given to him or "them; and if ſuch ſheriff, officer, or other "perſon do not return the ſaid writ within that

" time, he or they ſhall be liable to an attach-
" ment."

Rule to be ſerved on the ſheriff perſonally, and if writ not returned in ſix days after, on affidavit of ſuch ſervice and motion the court will order an attachment.

If the writ is not returned in ſix days after ſuch ſervice; which muſt be always perſonal on the ſheriff, or orher officer having the return of the proceſs, an affidavit is made of ſuch ſervice and annexed to the rule, and on moving the court and reading the rule and affidavit, the court will order an attachment againſt the ſheriff, or other officer having the return of ſuch proceſs.

If the ſheriff returns a *cepi*, the plaintiff may make his election either to ſue forth an *habeas corpus ſuper cepi*, or give a rule for the ſheriff to bring in the body, which rule is purſued in like manner as the above rule to return the writ.

If the ſheriff was out of office, the writ was uſed to be a *diſtringas nuper vic.* but theſe rules of practice have given way to the ſpeedier and more effectual way by rules for attachment in manner above mentioned.

If bail above be not duly put in and juſtified, the bail bond to the ſheriff may be aſſigned.

By the ſtatute 4 *Ann. c.* 16. *ſect.* 20. if bail be not duly put in above, or if excepted againſt ſuch bail do not juſtify in time (as hereafter ſet forth) the plaintiff may apply to the under-ſheriff for an aſſignment of the bail bond.

By indorſement without ſtamp being ſtampt before action brought

And by the ſame act the ſheriff, at the requeſt and coſts of the plaintiff or his attorney, ſhall aſſign to the plaintiff the bail-bond by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two or more credible witneſſes, which may be done without any ſtamp provided the aſſignment ſo indorſed be duly ſtampt before any action be brought thereon.

If taken in London, no bail bond

No bail bond taken in *London* or *Middleſex* ſhall be put in ſuit till four days excluſive of the

the appearance day of the return of the writ on which the bail bond was taken, and no bail bond taken elſewhere ſhall be put in ſuit till after eight days, excluſive of the appearance day of the return of the proceſs, and all proceedings to the contrary thereof ſhall be ſet aſide with coſts.

ſhall be put in ſuit till 4 days after appearance, if elſewhere not till 8 days.

The aſſignment being made and ſtamped agreeable to the ſtatute as aforeſaid, the plaintiff may take out proceſs in his own name, and ſerve the principal (if an obligor) and his bail with copies thereof, for no ſpecial bail can be had to ſuch an action as that would be to have bail *ad infinitum*. Nor is the ſheriff after this action is brought anſwerable, though the bail ſhould prove inſolvent or inſufficient.

Proceſs may iſſue againſt the bail on the aſſignment, and the ſheriff will be no longer anſwerable.

The principal and bail on being ſerved as above, and having put in bail above in the original action, may obtain a baron's order to ſtay proceedings on the bail bond, on payment of coſts, and receiving a declaration in the original action pleading iſſuably, and taking ſhort notice of trial if neceſſary, provided the plaintiff has loſt no trial, or if he has, that defendant will conſent that judgment be entred againſt them on the bail bond for the plaintiff's ſecurity.

The proceedings on the bail bond may be ſtaid on terms.

The bail to the ſheriff may at the return of the writ put in bail before a baron, againſt the defendant's conſent, in order to perform the condition of the bail bond, and then they may immediately take up the defendant, and ſurrender him to the *Fleet* in diſcharge of themſeves, whereupon immediate notice muſt be given to the plaintiff's attorney.

The bail to the ſheriff may ſurrender the principal after giving bail above for that purpoſe.

Of

Of putting in bail above.

Special bail, how put in above if in town.

On putting in bail above. If it be, to be put in, in town; the bail piece muſt be made out by the defendant's attorney who is to attend with the bail at the baron's chambers, within four days excluſive after the return of the writ, and the ſaid attorney having obtained the caption gives notice thereof to the plaintiff's attorney, as it is ſet forth in the appendix.

How if in the country by commiſſion impowering to take bail.

If the ſpecial bail is to be taken in the country, the barons or any two of them (whereof the chief baron to be one) may by a commiſſion under the ſeal of the court, (in caſe there be no commiſſioner already impowered) impower an attorney, or ſolicitor as they ſhall think proper, in any of the counties of *England*, to take ſuch recognizances of bail as any perſon ſhall be willing to make before him in any action or ſuit in this court, in manner and form as the barons of the court have uſed to take the ſame, which recognizance ſhall be tranſmitted to one of the barons, who upon affidavit made of the due taking thereof, ſhall receive the ſame upon payment of the uſual fees, which recognizance ſhall be of the like effect as if taken *de bene eſſe* before any baron of the court, *Stat.* 4 & 5 *W.* & *M. cap.* 4.

For taking the recognizance the commiſſioner is to take 2 *s.* and no more.

The judges of aſſize may take the bail.

The judges of the aſſize may by the ſame ſtatute take recognizances of bail, which ſhall be tranſmitted and received as aforeſaid without oath.

The

The bail may juſtify themſelves by affidavit before the commiſſioners, unleſs they live in *London* or *Weſtminſter*, or within ten miles thereof.

The bail may juſtify by affidavit in the country, but the bail put in before a judge, muſt juſtify in town.

Bail put in before a judge muſt juſtify in perſon, and cannot juſtify by affidavit.

Upon this act for taking bail, the barons have made the following rule.

Trin. 26 & 27 *Geo.* 2. It is ordered " That " in every action where ſpecial bail is put in " before one of the barons of this court, the " plaintiff may except thereto within 20 days " next after the putting in of ſuch bail, and " notice thereof given in writing to the plain- " tiff, his attorney or clerk in court, or where " ſpecial bail is put in before any commiſ- " ſioner, the plaintiff may except thereto with- " in 20 days next after the ſaid bail is to be " tarnſmitted to and allowed by one of the bar " ons of this court, and notice thereof given " in writing as aforeſaid; but no exception " to bail ſhall be admitted, after the time " herein before limited, and in caſe exception " ſhall be taken to the ſaid bail within the " time aforeſaid, and notice of ſuch exception " ſhall be given in writing to the defendant's " attorney or clerk in court, the defendant " ſhall perfect his bail, and juſtify the ſame " upon the firſt day of the ſubſequent term, " unleſs the plaintiff, his attorney or clerk in " court ſhall conſent to a juſtification before " one of the barons of this court, in which " caſe the ſaid bail ſhall juſtify themſelves be- " fore one of the barons within four days after " notice of ſuch exception in writing given to " the defendant, his attorney or clerk in court, " and in default of the defendant juſtifying his bail

Where ſpecial bail is put in before a baron, plaintiff may except in 20 days after putting in bail, and notice, and if in the country 20 days next after the bail is tranſmitted and allowed, and notice thereof given,

on ſuch exception, the defendant ſhall perfect his bail the firſt day of the ſubſequent term, or before a baron in 4 days, or plaintiff may proceed on the bail bond.

" bail in either of the ſaid caſes, the plaintiff " ſhall be at liberty to proceed on the bail " bond."

The bail are each to ſign the bail piece.

The bail uſually ſign the bail-piece in conformity to the conſtant practice of the office at the foot thereof, and if exception is taken to the bail, and they are required to juſtify, the following rule directs the *quantum* for which the bail are each to juſtify.

and juſtify in double the ſum.

Eaſter 33 *Geo.* 2. It is ordered " That in " every action where ſpecial bail is put in, and " the plaintiff in ſuch action ſhall except to " ſuch bail, then ſuch bail (if but two) ſhall " each of them juſtify himſelf in double the ſum " ſworn to, and marked on the back of the " writ or proceſs, by virtue of which the de- " fendant was arreſted, or on which he put in " bail."

The form of taking the bail, and of excepting thereto, and of juſtifying, as alſo of the affidavits of caption, and of juſtification which are to be annexed to the bail-piece taken in the country, will be found in the appendix.

The coſts of ingroſſing the bail-piece duty and parchment, 3 *s.* 2 *d.*

The country bail pieces to be tranſmitted and allowed by a baron.

The country bail-pieces muſt be tranſmitted to the defendant's attorney, who muſt carry it to one of the barons for his *allocatur*, for which the ſolicitor pays 8 *s.* 8 *d.* and the baron indorſes the *allocatur* on the back of the bail-piece.

The town bail piece to be taken before a baron;

If it is a town bail piece, the attorney or clerk in court fills up, and carries it to the baron's chambers, who takes the caption for which he is paid 8 *s.* 8 *d.* for the baron, and 2 *s.* 4 *d.* for the warden.

Both

Both town and country bail-pieces are carried from the baron's chambers to the plaintiff's attorney, that he may have notice to enquire after the bail, and except, if he is ſo adviſed; and when the bail is perfected, it is carried to the maſter for his *fiat*, who having indorſed it to be filed, and received his fees of 4 *s.* the writ is filed, for which and clerk's fee is paid 4 *s.* 4 *d.* and the parties are thereupon compleatly in court to proceed upon the bill or declaration hereafter mentioned.

and from thence they are carried to the plaintiff's attorney, and their having received the maſter's fiat is filed.

The orders which the barons directed to be obſerved on the aforeſaid act of parliament for taking ſpecial bail in the country, upon actions and ſuits depending in the exchequer, were as follows:

Directions for the commiſſioners how to take bail.

Bail-piece how made.

" It is ordered that the bail-piece ſhall be " fairly ingroſſed on parchment, in the form " following:

A. B. *Attorn.* } *Middl'x, ſſ.*
C. *Def.* }

J. D. *de* Iſlington *in com' predict'* Gent. *traditur in ballium ſuper cepi corpus.*

E. D. *de* Hackney *in com' predicto* Gent. *et*
R. F. *de* Highgate *in com' pred'co* Gent.

Adſ.

Cap't & cogn' - - - *R. R.*
apud - - - - - -
die - - - 1698.
coram
A. F. *un' commiſſ.*

is to the bill, and not to the writ.

N. B. The bail is put in to the bill, and not to the writ, in the office of pleas; and therefore it has been the practice to leave out the county at the top of the bail-piece, that it may not vary from the bill.

" In

" In taking the recognizance the following words must be used, namely, You (naming the bail) do take to bail (naming the defendant), at the suit of (naming the plaintiff) in (naming the cause of action); and you do jointly and severally agree, that if the said defendant (naming his name) shall be condemned in this action, and shall not satisfy the condemnation, or render his body to the prison of the *Fleet*, that your bodies, lands and goods shall be liable to satisfy the condemnation." How to be taken.

" And if any bail be given upon any action or actions removed out of any inferior court by writ of *Habeas corpus*, and returnable in the court of exchequer, then, instead of writing (*super cepi corpus*) as above, you must write (*super breve de habeas corpus*), and the cognizors must undertake that if the defendant be condemned at the suit of the plaintiff or plaintiffs in the plaint, that he shall satisfy the condemnation, or render his body, &c. as aforesaid. On removal from inferior courts by habeas corpus.

" It is ordered that the affidavit for the due taking of every such bail shall be made either before some baron of the exchequer, to whom the bail shall be transmitted, or before some person who shall have power to take affidavits in matters and causes depending in the said court." Affidavit of the caption,

" It is ordered, That all bails taken by any commissioner within the distance of forty miles from the cities of *London* and *Westminster*, shall be transmitted to the lord chief baron of the court of exchequer, or to one of the barons of the said court, within ten days after the taking thereof; and all bails to be transmitted if within forty miles, in ten days.

" taken

" taken by any commiſſioner above the diſtance
if above 40 miles, within 20 days. " of forty miles from the ſaid cities of *London*
" and *Weſtminſter*, ſhall be tranſmitted within
" twenty days after the taking thereof, unleſs
" all the ſaid barons ſhall be in their circuits;
" and then, as ſoon as any of them ſhall be
" returned to his chambers, in one of the ſer-
" jeants inns or elſewhere where the ſaid cham-
" bers ſhall be."

Where bail is given to the ſheriff, the bail above muſt be tranſmitted in eight days, or the bail bond may be aſſigned. This rule is only in force where bail is to be put in by a priſoner in cuſtody, foraſmuch as in caſes where the defendant has given bail to the ſheriff, the bail given in above muſt be tranſmitted (unleſs it be in *London* or *Middleſex*) within eight days after the return of the writ on which the defendant was arreſted, or the bail-bond given to the ſheriff may be aſſigned by the ſtatute of 4 & 5 *Ann. cap.* 16. made ſubſequent to theſe rules, and hereafter mentioned, and an action brought upon the ſheriff's aſſignment of the bail bond.

Muſt be tranſmitted to the clerk in court, who gets the baron's allocatur. The bail-piece is not tranſmitted to the baron, but to the attorney or clerk in court, who waits on the baron for his *allocatur*.

Every commiſſioner to keep a book. " It is ordered, That every commiſſioner have
" a book kept purpoſely for entering exactly
" the names of the defendant and his bail, and
" of the plaintiff or plaintiffs, as it is in the
" bail-piece, and the time of the taking there-
" of, and the name of him by whom ſuch bail
" ſhall be tranſmitted, and alſo the name of
" the attorney for the defendant."

Plaintiff's attorney may inſpect. " It is farther ordered, That the plaintiff's
" attorney ſhall be at liberty to repair to the
" commiſſioner's book for the names of the
" bail, to the end that they may enquire after
" the

" the ſufficiency of them; and if they are " found inſufficient, they may except againſt " them within twenty days after the ſaid bail " is tranſmitted, and notice to the plaintiff or " his attorney; and in that caſe the defendant " muſt either put in better bail, or the cogni- " zors of ſuch bail muſt juſtify themſelves in " open court, either by oath made in court, or " before one of the barons of the ſaid court."

and may except to the bail in 20 days after the bail is tranſmitted.

The delivery of a declaration before ſpecial bail is put in is a waiver of the bail; and if before bail is juſtified, it is an acceptance of the bail; but if delivered *de bene eſſe*, then it is only conditionally that good bail be put in, or that the bail already put in do juſtify.

Delivery of declaration before bail put in, waives it, and before juſtification is an acceptance of the bail;

but if delivered de bene eſſe, it will be conditional.

If a plaintiff accepts of an aſſignment of the bail bond, and the defendant puts in the ſame bail above that were put in to the ſheriff at the return of the writ, the plaintiff cannot except againſt them.

Accepting an aſſignment of the bail bond, plaintiff cannot except to the ſame bail above.

On the death of the principal, it is impoſſible for the bail to bring in his body, and the bail ſtand engaged that the principal ſhall render himſelf, which muſt be intended upon proceſs awarded againſt him in his life-time. 1 *Nelſ.* 328.

On death of principal bail is liable, if proceſs awarded before his death.

If there is bail, and the bail be taken off the file, the plaintiff is without remedy, though a *habeas corpus* and bail-piece were loſt in *B. R.*

If bail-piece be taken off the file, the plaintiff is without remedy.

and new ones were ordered to be made out. *Style* 261.

Proceeding on the bail bond cannot be ſtaid till bail is put in above.

No motion can be made to ſtay proceedings on a bail bond againſt the bail, unleſs bail be put in above; for until bail is put in above, the bail are not in court.

If defendant neglects to put in bail, the bail bond is forfeited.

If the defendant neglects to put in bail, the bail-bond is forfeited, though the plaintiff took no ſtep to quicken him.

Though the plaintiff took no ſtep to quicken him.

Merriman againſt *Carpenter*, *Mich.* 20 *Geo.* 2. The writ was returnable in *Eaſter* term, and a bail bond taken, the plaintiff never ſtirred till 24 *October*, and then took an aſſignment of the bail bond; and ſpecial bail being put in the next day, the queſtion was, Whether on ſtaying proceedings the bail bond was to ſtand as a ſecurity. The defendant inſiſted it ſhould not, becauſe the plaintiff did not deliver a declaration *de bene eſſe*, as he might have done, and thereby quickned the defendant. But the court held he was not bound to do ſo; and the defendant was in the firſt fault, whereby the plaintiff had loſt a trial, ſo the defendant was forced to conſent to let the bail bond ſtand as a ſecurity. *Strange* 1262.

Plaintiff not compellable to declare till bail filed.

By the old rules it is ordered, "That in all "caſes wherein ſpecial bail is requirable, the "defendant's appearance ſhall not be accepted "without putting in ſuch bail; and the plain-"tiff ſhall not be compelled to file his declara-"tion until ſuch ſpecial bail be put in and filed "upon record in the ſaid office."

The bail being compleated above, the defendant is in court, and the plaintiff may proceed by bill or declaration in the uſual courſe, as hereafter is ſet forth.

Of

Of ſpecial writs.

Till the preſent rules of the office were obtained, ſpecial writs were frequently commenced to prevent imparlances; and by the ſtatute of 5 *Geo.* 2. *cap.* 27. *ſect.* 5. "No ſpecial writ or writs, or any proceſs ſpecially therein expreſſing the cauſe of action, ſhall be ſued forth where the cauſe of action does not amount to ten pounds or upwards in any ſuperior court; and all proceedings and judgments that ſhall be had on ſuch ſpecial writs or proceſs, ſhall be void; and the attorney or officer ſuing forth or iſſuing ſuch writ or proceſs, ſhall forfeit ten pounds to the perſon aggrieved, who may recover the ſame by action, *&c.*"

No ſpecial writ where the cauſe of action is not 10 l. or upwards.

By this ſtatute, and the preſent rules to prevent imparlances, ſpecial writs are grown into diſuſe in this as well as the other courts of *Weſtminſter-hall*, being now rendered quite unneceſſary, and conſequently oppreſſive, by the extraordinary expence they occaſion.

Special writs become uſeleſs and oppreſſive.

Of the ſubpoena ad reſpondendum.

The third proceſs iſſuing out of the office of pleas is by a writ called *ſubpœna ad reſpondendum*, which hath the form of a *ſubpœna* by *Engliſh* bill in this court, ſave that on the back ſide it is indorſed, (in the office of pleas), for which the ſolicitor pays 5*s.* 8*d.* and adds his fee of 6*s.* 8*d.*

The ſubpœna ad reſpondend', its form.

This writ was in uſe in *Henry* the Eighth's time; how long before, appears uncertain. In that reign the entries run thus, *Et queritur per*

In uſe in Hen. the 8th's time.

villam verſus J. A. preſent' hic in cur' eodem die ſuper breve de ſubpœna.

Ordered to be continued.

By the old rules it is ordered, "That all "writs of ſubpœna iſſuing out of this court "returnable in the office of pleas, and all pro- "ceſs of contempt thereupon be made, as "hath been anciently uſed, in the ſaid office."

Its purport, & how ſerved.

This writ is no more than a ſummons to the defendant to appear at ſuch a man's ſuit by a certain day, upon pain of 100*l.* It is directed to no county, and may be ſerved in any part of *England*, *Wales*, or *Berwick* on *Tweed*, as well within liberties as without, (the form is ſet forth in the Appendix), it may be ſerved under ſeal, or by a copy or label, (as deſcribed alſo in the Appendix), either on the defendant perſonally, or by leaving it with the defendant's wife, ſon, daughter or ſervant, in his houſe or lodging, or even with the perſon with whom the defendant lodges, (but not with the ſervant of ſuch lodging houſe), at the ſame time ſhewing the writ under ſeal to the perſon ſerved.

Its uſe.

This writ of *ſubpœna* is an uſeful proceſs in caſes where the defendant ſecretes himſelf, and cannot be ſerved by the writ of *Quo minus*, which requires perſonal ſervice, nor has goods or lands wherewith to raiſe iſſues by the proceſſes of *Venire facias* and *Diſtringas*, and even where the defendant is deſperate, the plaintiff may by this proceſs be ſecured by means of the ſubſequent proceſſes of contempt hereafter mentioned, for as much as the commiſſion of rebellion (the laſt proceſs of contempt) impowers its commiſſioners to follow the defendant over all the kingdom of *England*, principality of *Wales*, and town of *Berwick* upon *Tweed*, as well within liberties as without; which commiſſion of rebel-

lion is confined to no county, any more than the proceſs of *ſubpœna*.

Of the attachment and ſubſequent proceſs of contempt.

If the defendant does not enter his appearance by his attorney to this writ of *ſubpœna* in four days after the return day named in the writ (affidavit being firſt made of the ſervice, the form of which ſee in the Appendix) the plaintiff's attorney files the affidavit as his warrant for iſſuing out the proceſs of contempt, called an attachment, which ſuggeſts a charge againſt the defendant for divers treſpaſſes, contempts and offences, a copy whereof you will find in the Appendix. Attachment what, and when iſſuable.

The attachment being ſent to the ſheriff, and returned by him *non eſt inventus*, in caſe the defendant cannot be found, the plaintiff's attorney files the writ ſo returned, to warrant his iſſuing out an *alias* attachment, in caſe defendant's appearance is not entered; and in like manner the *alias* attachment being returned *non eſt invent'*, and filed, and defendant's appearance not entered, a *pluries* was heretofore uſed to iſſue; but by rule of court it was many years ſince ordered, "That after the two attachments "returned, a proclamation of rebellion ſhall "iſſue without a *pluries attachm'*." Alias attachment when iſſuable. Proclamation.

The attachment with proclamations of rebellion differs only from the firſt attachment by the following addition, (after the *non omittas* to enter the county), namely, "And in all places "in your bailiwick where it ſhall ſeem moſt "expedient to you, do you cauſe public pro-"clamation to be made that *A. B.* and *C. D.* The attachment with proclamations, and the purport of it.

" on pain of the allegiance from them to us
" due, do perſonally appear before the barons
" of our exchequer at *Weſtminſter* on the
" day of next coming; and in the
" mean time that you omit not, *&c.* but enter
" the ſame, and attach, *&c.* as in the attach-
" ment." The attachment with proclamations is iſſued and returned in like manner, *non eſt invent'*, but in the following form, namely,

The return of it by the ſheriff.

" The within named *A. B.* and *C. D.* are not,
" nor either of them is found in my bailiwick;
" and I further certify, that I have cauſed to
" be made public proclamation, as within I
" am commanded; but the ſaid *A. B.* and *C. D.*
" did not nor either of them did appear."

E. F. Eſq; Sheriff."

Commiſſion of rebellion, and its purport.

And the writ being ſo filed, and defendant's appearance not entered, a commiſſion of rebellion iſſues, which directs certain commiſſioners therein named to enter any liberty, and attach the defendant wherever he ſhall be found within *England*, the dominion of *Wales*, or town of *Berwick* on *Tweed*, as a rebel and contemner of the laws, ſo that the commiſſioners, ſome or one of them, may have him before the barons on the return day therein mentioned, to anſwer the king concerning thoſe things which then and there ſhould be objected againſt him, and all mayors, ſheriffs, bailiffs, conſtables, and all other the king's officers, miniſters and ſubjects, are commanded to be aiding and aſſiſting the commiſſioners in the execution of the ſaid commiſſion.

For the ſeveral attachments the ſolicitor pays 5*s.* 8*d.* each, and for filing 1*s.* to which the ſolicitor adds his fee of 6*s.* 8*d.* to each, and for

for ſervice of the *ſubpœna* 2 *s.* 6 *d.* if diſtant, more in proportion. Affidavit of ſervice 4 *s.* 8 *d.* filing it 1 *s.* and warrant 2 *s.* 6 *d.* The attachment with proclamation is charged to the attorney 3 *s.* 4 *d.* more than the attachment. All which writs are directed to the ſheriff of the county in which the defendant laſt reſided, and muſt be executed under the ſheriff's warrant by his bailiffs; but the commiſſion of rebellion is not directed to any ſheriff, but to commiſſioners nominated by the plaintiff, who are impowered by the ſaid commiſſion to take the defendant wherever he can be found in *England*, *Wales*, or town of *Berwick* on *Tweed*; and any one or more of thoſe commiſſioners are thereby impowered to act as bailiffs, gaolers and ſheriffs, and to call to their aſſiſtance any peace officer or other perſon to aſſiſt them in taking the rebel, as well on *Sundays* as other days; and they may, with the aſſiſtance of a conſtable, break open his houſe, to take him by reaſon of his contempt to the king and the law, which the ſheriff's bailiff cannot do upon an attachment or attachment with proclamation; but as commiſſioners have no power to remove the defendant, when taken out of their own cuſtody into the cuſtody of any other perſon not named in the commiſſion, it is uſual, and indeed neceſſary, to inſert a gaoler's name among the commiſſioners to be named in the commiſſion, that he may be charged with the cuſtody of the defendant.

Commiſſion of rebellion how executed.

The commiſſion is thus returned where the defendant cannot be found.

A return of the commiſſion by two of the commiſſioners.

To the within written barons, at the day and place within mentioned, we humbly certify that the within named *Peter Swift* is not found within *England*, dominion of *Wales*, or the town

of *Berwick* on *Tweed*, ſo that we cannot have the ſaid *Peter Swift* before the ſaid barons at the day and place within contained.

The coſts of this writ is 1 *l.* 9 *s.* 2 *d.* to which the ſolicitor adds his fee of 6 *s.* 8 *d.*

May move to have defendant committed to the Fleet.

The plaintiff may apply to the court on the return of the commiſſion executed, and the court will order the defendant to be committed to the Fleet, if he will not diſcharge the contempt money and enter his appearance.

Juſtices of peace cannot bail defendant tho' for an offence againſt the peace; but commiſſioners may bail him, if only for a contempt in not appearing.

After a defendant is taken upon this commiſſion, the juſtices of the peace cannot bail him, although it is an offence againſt the public peace; but the commiſſioners may in their own names bail him, with condition for the defendant's appearance, and indeed ought ſo to do if good bail is offered, rather than keep him lingering in priſon in their own houſes, in caſe it be only a contempt for not appearing, and not by an order of court.

When the commiſſioners ought to take bail.

Upon a motion for an attachment it was ſaid by the court, that commiſſioners of rebellion not only might, but ought to take a bond as a ſecurity from the defendant to appear, where it is upon the ordinary proceſs of the court, though a ſerjeant at arms could not in that caſe; but where it is upon an attachment for contempt of an order of the court, *&c.* there they ought not to take any ſecurity, but to have the body in court at the day of the return of the commiſſion of rebellion. *Jones* againſt *Clement* and *Hughes*, 26 *October* 1719. *Bunb.* 50.

Commiſſioners to be attached if they refuſe to return the writ;

If the commiſſioners refuſe to return this writ, the court on motion or petition will order them to return it; which order, if upon ſervice

ſervice they obey not, proceſs of contempt may iſſue againſt them.

Where private perſons are made commiſſioners, if they take the party, and ſuffer an eſcape, the court, on affidavit and motion and a day given to ſhew cauſe to the contrary, will order them to be committed till they bring him in or pay the debt. or if they permit an eſcape.

Thurbane & al', *Paſch.* 15 *Car.* 2. *in Scc'io*, commiſſion of rebellion iſſued againſt one *Thurbane* of *Gowtharſt* in *Kent*, and one *Green* appeared before the commiſſioners and affirmed himſelf to be the perſon; whereupon they apprehended him by virtue of their commiſſion; but he made reſiſtance, and ſnatched the commiſſion from them, and tore it in pieces. Upon affidavit made of this matter, an attachment was prayed againſt *Green*. *Hale* chief baron; If a wrong man be taken, though he affirm himſelf to be the perſon againſt whom the commiſſion is awarded, yet the commiſſioners having no warrant to take him by their commiſſion, his affirming himſelf to be the perſon will not excuſe them in falſe impriſonment; as has been held upon the executing of a *capias*. But an attachment was granted *niſi*, *&c.* upon this affidavit. *Hardr.* 323. Attaching a wrong perſon is falſe impriſonment, tho' he declares himſelf to be the defendant.

In caſe the defendant ſhould be arreſted by virtue of any one of the above named writs, he muſt either give forty pounds bail to the ſheriff on either the attachment, the *alias* attachment, or the proclamation of rebellion: but on the commiſſion of rebellion the 40 *l.* bail muſt be given to the commiſſioners named in that commiſſion. What bail required.

This

Difference between attaching and arreſting.

This writ of attachment is one of the moſt antient proceſſes iſſuing out of the office, and it differs from an arreſt in this, that he who arreſteth a man carrieth him to a perſon of higher power, to be forthwith diſpoſed of; but he who attacheth him keepeth him attached, and preſents him in court at the day aſſigned.

No attachment till four days after the return of the ſubpœna;

By the old rules it is ordered, "That no attachment iſſue againſt any perſon for not appearing upon a *ſubpœna*, until four days after the return of the writ, and day of appearance upon ſuch *ſubpœna*; and all attachments otherwiſe iſſuing to be void, and no *ſubpœna* ſhall be returnable *immediatè*, where the defendant lives or is ſerved above two miles from the cities of *London* or *Weſtminſter*."

but proceſs of contempt may iſſue die in diem.

But proceſs of contempt may be renewed *de die in diem*, it not being requiſite to ſtay four days after the return of the firſt attchment, which was determined in *Mich.* 1741, *Lodge* and wife againſt *Gibſon*.

The form of the attachment, proclamation, and commiſſion of rebellion, you will find in the Appendix.

Defendant's attornies undertaking in writing to appear and pay contempts, defendant ought to be diſcharged.

On any one of theſe proceſſes of contempt, if the defendant's attorney will undertake in writing to enter the defendant's appearance, and pay his contempt money, as hereafter mentioned, he may and ought to be diſcharged; and he cannot, otherwiſe than as above, be ſuperſeded by any of the rules for not proceeding to a declaration, judgment or execution in due time.

Perſons attached not ſuperſedable.

Appearance not perfect till

The rule of practice relative to appearance on attachments is, "That no appearance of a defendant in contempt, as aboveſaid, ſhall be

" be accepted till he pays the coſts of the " contempts, unleſs the plaintiff, for expedi- " ting his ſuit, ſhall chuſe to declare rather " than proſecute any further proceſs of con- " tempt, and he will then have his coſts at the " end of the ſuit." contempts diſcharged.

The contempt money to be paid by every defendant on entering his appearance by order as herein is mentioned, is as follows: What contempt money is to be paid on defendant's diſcharge.

	l.	*s.*	*d.*
If to the firſt attachment -	0	13	4
If to the *alias* attachment -	1	6	8
If to the attachment with proclamations - -	2	0	0
If to the commiſſion of rebellion	3	13	4

Beſides ſuch other coſts as ſhall be taxed by the maſter on the commiſſion of rebellion.

The reſt of the plaintiff's coſts on theſe proceſſes of contempt by the *ſubpœna* (except on the commiſſion of rebellion), abide the event of the ſuit; and the defendant's appearance being entered, and the contempt money paid to plaintiff's clerk in court, the plaintiff proceeds by bill or declaration, in the uſual courſe hereafter ſet forth.

Of the attachment by order of court.

In all other caſes of contempt for mal-practices or otherwiſe, affidavit of the facts muſt be made, and the court of exchequer moved thereupon to anſwer the matters in thoſe affidavits, or for an attachment againſt the perſon By motion for defendant to anſwer the matters by affidavit.

the perſon or perſons complained of, and in caſe the court ſhall find good cauſe of complaint, a rule is made for the party complained of, to ſhew cauſe in a reaſonable time accordingly, which time is always enlarged by leave of the court if required.

If rule to ſhew cauſe be diſcharged it is uſually with coſts.

On the day of ſhewing cauſe, the rule and affidavit are read in court on both ſides, and ſuch order made as is agreeable to juſtice; if the rule be diſcharged it is uſually with coſts, if it is made abſolute an attachment is ordered.

Attachment ordered to lie in the office where the caſe is favourable.

The attachment is frequently ordered to lie in the office a week or fortnight or more, where caſes are favourable.

If defendant be attached in the country he may be brought to town by *Habeas corpus*, and bailed or committed, to be examined on interrogatories, and if exculpated, be diſcharged on terms.

If the defendant be attached, the ſheriff cannot take bail where the attachment is by rule of court; but if the defendant be taken in the country, he may be brought up by *Habeas corpus*, and bailed at a baron's chambers, or committed to the *Fleet*, as the nature of the caſe requires, and he may be examined upon interrogatories, and if he can exculpate himſelf, he will be diſcharged on terms.

On voluntary appearance defendant may be examined on interrogatories on notice, and plaintiff thereupon muſt file his interrogatories in 4 days, and if not then exhibited, or reference procured in a month, the party may be diſcharged with coſts.

If the party being in contempt appear *gratis* to be examined thereupon, he is to give notice of ſuch his appearance to the attorney on the other ſide, and if within four court days after ſuch appearance, and notice given interrogatories ſhall not be exhibited, whereon to examine the party, or if no reference be procured of his examination within a month, then the party thus put under contempt may be diſcharged with coſts by an order of court. *Rigby*

Rigby againſt *Dawſon*, *Eaſter* 1749. In *ſcc'io* *M. S.* an attachment was ordered againſt *Ford* an attorney, and a ſubſequent rule was made that the perſonal appearance of *Ford* ſhould be recorded, and that the plaintiff ſhould file interrogatories in 4 days after notice.

Order for appearance perſonally, and to file interrogatories in 4 days.

If after appearance, and interrogatories exhibited as aforeſaid, the party appearing ſhall depart before he is examined without leave of the court, a rule of court may be obtained for his ſtanding committed upon affidavit and motion, and he will not be diſcharged from his contempt until he has been examined upon interrogatories, and is cleared thereof.

If he depart without leave of the court, he will be ordered to ſtand committed on terms.

And if he ſhall upon his examination be found in contempt, and thereupon be committed, he ſhall clear ſuch his contempt, and pay the proſecutor his coſts before he be diſcharged from his impriſonment.

The like if found in contempt.

Commiſſions were uſed to be iſſued out of the office of pleas, for the examination of witneſſes upon contempts, but happily this being a caſe which has been ſeldom required, there may at this time ariſe a doubt whether commiſſions of this kind are iſſuable from the law branch of this court or not, and therefore it may be expedient to inſert one of theſe commiſſions, which will be found in the appendix by way of precedent.

Commiſſion to examine witneſſes upon a contempt.

By the old rules it is ordered, " That all af-
" fidavits to be made touching any matter in the
" ſaid office of pleas, ſhall be ſworn or taken
" before one of the barons or judge of aſſize
" in his circuit, or a perſon commiſſioned to
" take affidavits in this court, and ſhall be
" filed in the ſaid office, and that office copies
" be made of all affidavits ſworn or taken in the
" country,

Affidavits to be ſworn before the barons or judge of aſſize on his circuit, or commiſſioners to take affidavits in the country.

" country, before the ſame are read or made " uſe of in court."

Affidavits of debt alſo before the clerk of the pleas or his deputy.

Affidavits of debt, in order to hold the defendant to bail, may be alſo ſworn by the clerk of the pleas, or his deputy for the diſpatch of buſineſs.

The charge for drawing all affidavits, and for the office copies thereof are each, 8 *d. per* folio.

The entry of the appearance is to the bill, and not the writ.

Thus far the reader is made acquainted with the ſeveral meſne proceſs iſſuing out of the office of pleas, before the action can be commenced which is by bill, to which bill, and not to the writ, the defendant's appearance is ſuppoſed to be entred, or his ſpecial bail to be filed.

The retainer of an attorney of either bench to be ſufficient authority to proceed.

And by the old rules, " The retainer of an " attorney of this court, by an attorney of the " king's bench or common pleas, ſhall be " a ſufficient warrant to the attorney ſo re- " tained, for his acting according to ſuch retain- " er, and the attorney ſo retaining without war- " rant from the party to be liable to the puniſh- " ment."

Of admiſſions in forma pauperis.

No admiſſion in forma pauperis, but by petition and certificate ſigned by his counſel.

In *Eaſter* 3 *Geo.* 1. It was ordered in court, " That no perſon for the future ſhall be ad- " mitted *in forma pauperis*, unleſs the attorney " to be aſſigned, or his clerk attend a baron " with a petition for his admiſſion, and that no " counſel ſhall be aſſigned unleſs ſuch counſel " only who hath certified the cauſe of action " and petition."

By

By the old rules it is ordered, " That none " be admitted to ſue as plaintiff *in forma pau-* " *peris*, without a certificate under his counſel's " hand, that he hath good cauſe of action " againſt ſuch perſon who is ſo to be ſued, and " no proceſs to be made out againſt any that " is not particularly named in the petition."

The certificate muſt be that he hath good cauſe of action, and that proceſs muſt be againſt no other but the perſon named in the petition.

The form of the petition and certificate will be found in the appendix.

Of action beneath the dignity of this court.

Actions brought for ſums under 40 *s.* are beneath the dignity of any of the courts of law in *Weſtminſter-Hall*; and unleſs in matters of account, or where the ſum is liquidated, or is remaining due of a larger ſum than 40 *s.* this court diſcountenances every action of this ſort, and in notorious caſes will diſcharge the action with coſts.

Actions beneath the dignity of the court are diſcountenanced.

Concerning appearances.

By the old rules it is ordered, " That all ap- " pearances in the office of pleas, in perſon or " by attorney upon proceſs or by conſent or or- " der, ſhall be entred in the appearance book by " an attorney of the ſaid office, and the day of " appearance inſerted.

Appearances to be entred in a book ſo called by an attorney in the office.

" That where any defendant ſhall appear " upon proceſs of contempt duly iſſued, for not " appearing upon a *ſubpœna*, ſuch defendant " upon his appearance ſhall pay the plaintiff, " or his attorney in court for ſuch proceſs re-

What contempts are to be paid on appearances to attachments, &c.

" turned, as followeth, *viz.* for every attach-
" ment 13 *s.* 4 *d.* for every proclamation of re-
" bellion 13 *s.* 4 *d.* and for a commiſſion of
" rebellion 3 *l.* 13 *s.* 4 *d.* and the plaintiff's ex-
" traordinary charges neceſſarily expended in
" the proſecution of all ſuch proceſs, to be
" taxed by the clerk of the pleas, and every
" defendant paying ſuch coſts may appear by
" attorney.

No appearance to be accepted without ſuch payments, unleſs plaintiff chuſe to declare, and then plaintiff may have his coſts allowed by the maſter and ſubpœna for the coſts.

" That no appearance of any ſuch defendant
" ſhall be accepted, if he does not firſt pay
" ſuch coſts as aforeſaid, unleſs the plaintiff for
" expediting of his ſuit ſhall chuſe to declare,
" rather than proſecute any further proceſs of
" contempt, and then the plaintiff after his
" declaring may have his coſts duly expend-
" ed before the ſaid appearance taxed by the
" clerk of the pleas, and ſhall have a *ſubpœna*
" to iſſue out, directed to the defendant for
" payment thereof, and upon default of pay-
" ment like proceſs of contempt to iſſue againſt
" him out of the office of pleas, and like
" charges to be allowed as in caſe of not appear-
" ing upon a ſubpœna."

Four days to enter appearance to ſubpœna and venire facias, none to ſtay attachments or diſtringas.

The defendant has four days to enter his appearance to the writs of *venire facias*, and ſubpœna; but there is no ſtay for the appearance between one proceſs of contempt and the other either by attachment or diſtringas.

If the defendant does not appear within the four days, the plaintiff may on the 5th day iſſue the proceſs of contempt, *viz.* the diſtringas after the *venire facias*, and the attachment after the ſubpœna.

The

The defendant has eight days to enter his appearance on the writs of *Quo minus*, and *capias ad reſpondendum*, and if he does not appear within that time, the plaintiff on affidavit of the ſervice may on the ninth day enter an appearance for the defendant according to the ſtatute, as has been ſaid before.

Eight days to appear to quo minus or capias.

Trin. 5 *Geo.* 2. 13th *June*, it is ordered, That all affidavits ſhall be filed before any appearance be entred.

Affidavit to be filed before appearance entred.

The clerk in court charges for the appearance 6 *s.* to which the ſolicitor adds his fee of 3 *s.* 4 *d.*

" That every defendant appearing upon " any proceſs iſſued out of the ſaid office, by " order of court, for any other contempt than " as aforeſaid, ſhall appear at the return day of " ſuch proceſs in his own perſon, and not other- " wiſe, and ſhall render himſelf in open court, on " or before one of the barons, ready to be ex- " amined, and that if within four court days " after ſuch day of his appearance, and ren- " dring himſelf, the party proſecuting ſuch " defendant ſhall not exhibit in writing before " one of the ſaid barons, interrogatories for ſuch " defendant to be examined upon touching " ſuch contempt, ſuch defendant ſhall be " diſcharged from further attendance with " his reaſonable coſts to be taxed by the clerk " of the pleas, for the obtaining of which coſts " like proceſs ſhall iſſue as for coſts taxed for " not appearing, and no other proceſs ſhall be " iſſued againſt ſuch defendant for any ſuch " contempt without order of court, nor till the " defendant be paid his coſts ſo taxed."

The appearance muſt be in perſon upon contempt by order of court on the day of the return,

to exhibit interrogatories in 4 days after

or defendant diſcharged with coſts,

for which proceſs ſhall iſſue.

Order for defendant to receive a declaration of a term prior to that of his appearance.

Williams qui tam againſt *Edward*, *Hil.* 1748. ordered, That defendant's clerk in court be obliged to enter his appearance, and receive a declaration as of *Eaſter* term laſt, when the writ of ſubpœna was returnable; the reaſon for this rule will be given hereafter. (*Vide page* 153.)

Order that defendant be made acquainted with plaintiff's place of abode.

Same againſt Same, ordered, That the plaintiff's clerk in court do give the defendant's clerk in court a note in writing of plaintiff's place of abode, and that defendant have a week's time to plead after ſuch notice.

N. B. This application ought to be made before the rule to plead is out.

Plaintiff may declare againſt defendant in cuſtody,

The plaintiff may, if he thinks it adviſable, file his bill or declaration againſt the defendant while he is in cuſtody of the ſheriff, as well upon one of the proceſſes of contempt, as upon the writ of *Quo minus*, in order to expedite his judgment: but the defendant ſo under contempt cannot ſuperſede himſelf for want of further proceedings under any of the rules made in favour of priſoners for debt; this impriſonment being for a contempt of the court, and not on account of the debt due to the plaintiff, and can only de diſcharged by paying the contempt money, and entring his appearance as aforeſaid.

but if defendant be under contempt he cannot ſuperſede till the contempts are diſcharged.

Several orders made to prevent ſheriffs and other immediate accountants from being ſurprized by bills brought againſt them as preſent in court.

There are ſeveral orders of court concerning the appearances of ſheriffs and other immediate accountants, that they may during their accounts be always preſent in court by their attorney, to anſwer all matters of complaint that may be brought againſt them in this office, and that they may not be ſurprized by bills being filed againſt them as preſent in court, and judgment obtained thereon for want of an appearance

appearance by their attorney. Here the following is one of thoſe amongſt the old rules, namely,

" That for the better preventing of ſurprizes " againſt the ſheriffs and accountants upon " bills filed againſt them, all ſheriffs and accountants, who heretofore have put in their " warrants of attorney in the offices of the " firſt fruits, and of the treaſury-remembrancer of this court in like manner, ſhall " hereafter put in their reſpective warrants of " attorney in the office of the clerk of the pleas, " to one of the attorneys in that office at their " peril."

All ſheriffs, &c. muſt enter their appearance.

Of the bill or declaration.

The defendant being thus brought into court by appearance, ſpecial bail or impriſonment by virtue of one or other of the above mentioned writs, the plaintiff files his bill.

The bill in law proceedings is a declaration in writing expreſſing either the wrong the plaintiff hath ſuffered by the party complained of, or elſe ſome fault committed againſt ſome law or ſtatute of the realm; it contains the fact complained of, and the damage thereby ſuſtained.

Bill or declaration, what.

By the 36 *Edw.* 3. *cap.* 15. it is ordained, " That a count (which is the ſame with the " declaration) ſhall be good, if it hath matter " of ſuſtance, though the terms are not per- " fectly apt and proper."

Will be good if it hath ſubſtance.

The courſe of the exchequer hath been, that bills have been filed againſt all officers, and accountants as preſent in court, in any reſpect accountable to the king before the barons of the

exchequer, except ſuch as are excepted by act of parliament. 1 *Rich.* 2. *cap.* 14.

The draft of the bill is delivered over to be copied by the defendant.

By the old rules, it is ordered, "That all "bills exhibited in the ſaid office ſhall be firſt "drawn in paper, and then delivered to the "defendant's attorney in the ſaid office, (and "not to any clerk to be copied) who ſhall in-"dorſe thereupon the day when the plaintiff's "attorney delivered the ſame unto him, toge-"ther with his name, and return the ſaid bill "copied unto the plaintiff's attorney, who "ſhall ingroſs the ſaid bill on parchment, and "file the ſame upon the file of bills of that "term wherein the appearance is entred or "ſpecial bail filed."

Where the appearance is entred according to the ſtatute, the declaration is well delivered by notice ſerved on the plaintiff.

In all caſes where the copy of the proceſs is ſerved, and the appearance is entred according to the ſtatute, a notice of the bill or declaration being filed is ſerved on the defendant, or left at his laſt or uſual place of abode, from the time of which notice the declaration is well delivered; and if defendant do not plead within the rules hereafter ſet forth, judgment may be ſigned without further calling for a plea.

Not compellable to plead before the bill is compleated.

"No defendant ſhall be compelled to plead "to any bill before the ſame be perfected, and "filed upon record as aforeſaid."

Plaintiff not compellable to file bill till ſpecial bail compleated.

"In all caſes wherein ſpecial bail is reqira-"ble, the defendant's appearance ſhall not be "accepted without putting in ſuch bail, and "the plaintiff ſhall not be compelled to file his "declaration, until ſuch ſpecial bail be put in "and filed upon record in the ſaid office."

Declaration may be amended before rule to file it or to plead be out.

"Before the declaration be filed, and before "a rule be given by the defendant for the "plaintiff to file his declaration be out, the

"plaintiff

" plaintiff may amend his declaration giving " notice to the defendant's attorney of the a- " mendments.

As to the method of proceedings againſt priſoners they are diſtinct, and are inſerted hereafter by themſelves.

By the old rules it is ordered, " That upon " every defendant's appearance, the plaintiff " may put in as many declarations as he will " againſt every ſuch defendant, provided they " all be put in at one and the ſame time."

Plaintiff may put in as many declarations as he will at the ſame time.

If there be more than one declaration delivered at the ſame time againſt the ſame defendant, every additional declaration ſo delivered, is called delivering the declaration by the bye, and whether there be one or more declarations delivered, they muſt be put in within the time limited for keeping cauſes in court, which is till the eſſoign day of the fourth term, including the term in which the appearance was entred or ſpecial bail filed, unleſs a rule for nonſuit be given as hereafter mentioned.

Which is called delivering declarations by the bye; the cauſe continues in court without declaration until the eſſoign day of the 4th term.

By the old rules it is ordered, " That in " actions of covenant no more of the deed be " repeated, than is neceſſary for the aſſignment " of the breach, and not to repeat the cove- " nant in concluſion."

In actions of covenant to repeat no more of the deed than is neceſſary.

" That in actions of ſlander, long preambles " be forborn, and no more inducement than " what is neceſſary for the maintenance of the " action, but when it requireth a ſpecial in- " ducement or *Colloquium*."

In ſlander to forbear long preambles.

" That in all actions upon general ſtatutes, " the declaration is not to repeat the ſtatute at " large; but to conclude againſt the form of " the ſtatute in ſuch caſe made and provided."

In actions upon ſtatutes not to repeat the ſtatute.

In actions on judgment, except by or againſt executors or adminiſtrators, to recite only the judgment.

" That in actions of debt upon a judgment had in any of the courts at *Weſtminſter*, to recite only the judgment is enough, but if the judgment be had by or againſt an executor or adminiſtrator, then the action of debt upon the judgment to repeat the declaration and judgment."

Action for words, treſpaſs, &c. to be laid in their proper counties.

" That all actions upon the caſe for words, treſpaſs, aſſault or impriſonment ariſing in any *Engliſh* county, ſhall be laid in their proper counties, unleſs they ariſe in *Wales*, or a county where juſtices of aſſize and *Niſi prius* ſeldom come."

Unleſs in Wales.

" That ſuch actions ariſing in any county of *Wales*, ſhall be laid in their proper counties or in the *Engliſh* county next adjoining thereunto."

If otherwiſe laid venue may be changed,

" And that if ſuch action ſhall be otherwiſe laid before pleading thereunto, and upon oath made thereof, the venue may be changed upon motion the ſame term, when the declaration cometh, or if the declaration come in the laſt day of the term, or at any time after, the defendant may have liberty to move the court any time the next term before iſſue joined, as he ſhould have done to the other without delay; and becauſe treſpaſs and trover of goods, battery, impriſonment, and ſlander muſt needs be notorious in what county they ariſe, the attorney knowingly laying them out of their proper county (unleſs in the caſes before expreſſed, or for ſuch other cauſes as ſhall be allowed by the barons, and duly made appear to be true) to be ſeverely puniſhed."

and if knowingly miſlaid, the attorney puniſhable.

The

The formal part of all bills are as follows, *London* to wit, *Lemuel Gulliver* debtor of our lord the now king, cometh before the barons of this exchequer on the twenty-eighth day of *November* in this ſame term by *Philip Burton* his attorney, and complaineth by bill againſt *Peter Swift* preſent here in court the ſame day, of a plea of treſpaſs upon the caſe, *&c.* for that whereas, *&c.* (then follows the declaration part which is the ſame in all the courts to the concluſion of it, *viz.*) to the damage of the ſaid *Lemuel* of 50 *l.* whereby he is the leſs able to ſatisfy his ſaid majeſty the debts which he oweth him at his ſaid exchequer, and therefore he bringeth his ſuit, *&c.* Pledges to proſecute *John Doe* and *Richard Roe.* Form of the bill or declaration.

The bill muſt be filed of the term the proceſs was returnable, the appearance being ſuppoſed to be entred to the bill, and not to the writ, but in caſes where the appearance is entred upon proceſs of contempt, the court upon application will give the plaintiff leave to file the bill in the term the firſt proceſs iſſued. The bill to be filed in the term the proceſs was returnable.

A few drafts of declarations will ſuffice, and which will be inſerted in the appendix hereto, to ſhew the form of them, which as they vary in no part but as above from theſe of other courts, a greater variety of them will be ſurpluſage.

The fees due on every draft of a declaration or bill is 8 *d. per* folio, except as hereafter is mentioned; every ingroſſment 6 *d. per* folio, and every copy 4 *d. per* folio, and on every entry of a bill or pleading to the maſter his fee, if under 10 folios 2 *s.* if 10 folios or upwards to 20 is 3 *s.* 4 *d.* If 20 or upwards to 30 is 6 *s.* 8 *d.* and

ſo in proportion to the length for each 10 folios or under, an encreaſed fee of 3 *s.* 4 *d.*

In caſes of penal ſtatutes, and prohibitions 1 *s. per* folio drawing, and 8 *d. per* folio copying, out of all which proper allowances are made to the ſolicitor.

The fees for every accommodation are before the bill is filed, if the defendant is not in cuſtody, 3 *s.* 4 *d.* but if the bill is filed, or the defendant is in cuſtody, the accommodation fee will be 6 *s.* 8 *d.* and is payable to the ſolicitor; the term fees commence with the bill which are 3 *s.* 4 *d.* for the attorney, and 6 *s.* 8 *d.* for the ſolicitor, total 10 *s.* each term fee.

Of nonpros or nonſuits.

Cauſe in court till the eſſoign day of the 4th term, defendant within that time by a rule may nonpros plaintiff.

The old rule for keeping the cauſe in court is as follows.—It is ordered, "That a nonſuit "not being entred the two next enſuing terms "after the appearance term; the defendant's "attorney ſhall accept a declaration, and have "imparlance till the firſt return of the follow-"ing term, and the defendant during thoſe "three terms, and not afterwards, by giving a "rule may nonſuit the plaintiff for want of a "declaration."

The rule may be of 4 days in the appearance book,

and judgment for 40 s. except upon an arreſt, and in ſuch caſe 50 s.

A rule being given of four days in the appearance book for the plaintiff to declare, if no declaration is filed, nor baron's order obtained for time to declare, the defendant having entred his appearance may have judgment of nonpros for 40 *s.* coſts on all proceſs, except upon an arreſt, and in ſuch caſe 50 *s.* and if execution be ſued out thereon, it muſt be by ſubpœna for the coſts, if the judgment was on the

the proceſs of ſubpœna, but by affidavit or *ca. ſa.* if the judgment was on proceſs of *Quo minus.*

But if the matter ſhould be under an accommodation, or any thing ſhould prevent the plaintiff declaring within the above rule, he may have a baron's order for time to declare, if the defendant be not in cuſtody.

Plaintiff may have time by a baron's order.

But if the plaintiff is deſirous of preventing the judgment being ſigned, he may pay the accuſtomed coſts in lieu of a nonpros, which will be only 1 *l.* 5 *s.* 6 *d.*

Coſts in lieu of a nonpros.

By the old rules it is ordered, "That no "rule be entred to nonſuit the plaintiff upon "any appearance entred any enſuing term after "the return of the original proceſs againſt the "defendant."

No rule for nonpros on appearance any enſuing term after the return of the original proceſs.

The peculiar mode of this court which enforces its proceſs by further proceſs, as for a contempt, ſeems to have occaſioned this rule, which among other rules of the office follow ſuch others of them as concern contempts, under the title of appearances.—The defendant's appearance to the proceſs of contempt muſt by the common rules of practice be entred of the term, in which ſuch proceſs of contempt was returnable, which moſt likely would be of a term ſubſequent to the return of the original proceſs, in which caſe the plaintiff would be delayed, and might loſe his cauſe of action by the above ſtatutes of limitations, or other unforeſeen means. It would therefore be juſt and equitable, that the defendant having thus wilfully, and perhaps deſignedly brought himſelf under the contempt of the court, he ought to be deprived of every advantage which might be gained thereby.

The reaſon for it.

This

This rule therefore has deprived the defendant of diſcharging the action with coſts, and on the other hand the court will on application order the appearance to be entred of the term, in which the original proceſs was made returnable, and thereby ſave the ſtatutes, *&c.*

Replication, &c. or nonſuit a rule of days.

In like manner as in rule to declare, a rule of four days to reply, *&c.* being given in the book of orders, if no replication, *&c.* is filed nor baron's order for time obtained, the defendant may have judgment of nonſuit with coſts to be taxed by the maſter.

Nonpros after iſſue joined.

Scaryill againſt *Briggeman* after iſſue joined, *Quer exact' eſt & nonproſ. Mich.* 1 *Edw.* 4.

An earl nonſuited, and amerced as being a lord in parliament.

An action brought by the earl of *Weſtmorland*, againſt *Waller vic' Kanc'* for an annuity of 30*l.* granted by the king's letters patents the defendant pleads and denies the plaintiff's deſcent, whereupon the plaintiff is nonſuited, and the entry thereof is as follows:

Et ſuper hoc predictus comes Weſtmorland ad proſequend' billam ſuam predict' verſus prefat' W. Waller ſolemnit' exact' non ven' nec billam illam proſ. eſt ſed defalt' fec' Ideo conſideratum eſt per barones quod ipſe predictus comes nichil capiat per billam ſuam predictam ac ipſe & pleg. ſui ſint in m'ia d'ni regis &c. Et quia pred'cus comes Weſtmorland eſt unus dominorum temporal' parliamenti regis Ideo ipſe amercietur per cur' ad 100*s.* 1 Ric. 3.

Of the ſubpœna *for coſts.*

Theſe judgments of *non pros'* being ſigned and entered on the roll, writs of *ſubpœna* for the coſts, in the nature of an execution, are iſſuable, and warrants of attorney are reſpectively executed by each defendant to impower the perſon who is appointed to ſerve the *ſubpœna*, to demand and receive the coſts therein named; whereupon ſuch perſon ſerves the *ſubpœna* on the plaintiff perſonally, and demands the coſts of him; and if he refuſes payment (an affidavit of ſuch ſervice, demand and refuſal being made), an attachment iſſues for a contempt in not obeying the proceſs of the court; and if the party be thus attached, he muſt pay not only the coſts mentioned in the writ, but all ſubſequent coſts; and no *ſuperſedeas* in ſuch caſes can iſſue till the contempt is diſcharged.

Subpœna for coſts, and method of proceeding to attachments in this caſe.

The *ſubpœna*, warrant of attorney, and affidavit of the ſervice, demand and refuſal, will be found in the Appendix.

Of diſcontinuances.

Antiently plaintiffs were uſed to diſcontinue their bills or actions in this office without paying any coſts to the defendants. In thoſe times the maſter of the office might of courſe, at the requeſt of the plaintiff, diſcontinue any action without coſts, till complaint being made to the court of ſome mal-practice of that ſort, the court took it under their conſideration; and by an old rule, which ſtill continues in force, it was ordered,

Diſcontinuance to be on payment of coſts.

No diſcontinuance without an order of court.

ed, " That no diſcontinuance of any action by " any plaintiff, either before or after iſſue join- " ed, ſhall be entered without the ſpecial order " of the court, and payment of ſuch coſts un- " to the defendant or his attorney, as ſhall be " be taxed by the maſter of the office by reaſon " of ſuch diſcontinuance, except in ſuch caſes " whereby law coſts are not payable."

The motion is at ſide bar; but the coſts are uſually compounded.

The practice now is to make the motion at the ſide bar, for leave to diſcontinue on payment of coſts; and in order to leſſen the payment, it is uſual to pay the coſts of compoſition without any motion, which in ſuch caſe will be no more than 10*s.* 6*d.*

Executors and adminiſtrators may diſcontinue without coſts.

Executors and adminiſtrators (being plaintiffs) have been made ſubject to the coſts of diſcontinuing; but within a few terms paſt, the courts have been more indulgent, for this reaſon, namely, ſuch plaintiffs might proceed to judgment, without paying coſts either of a verdict againſt them or a nonſuit; and why ſhould the parties proceed to ſuch expences, when the plaintiff is willing to decline it ſooner?

In *Trin.* 9 *Geo.* 3. 14 *June*, in *Sccio. M. S. Hugh adminiſtrator* againſt *Loyd* executor, on the motion of Mr. *Kenyon* for the plaintiff, it was ordered that the plaintiff be at liberty to diſcontinue this action without coſts, the plaintiff ſuing as an adminiſtrator.

Of pleadings and imparlances.

Rules to plead are given in the book of orders.

The bill or declaration being filed, and the draft delivered over as aforeſaid, the plaintiff's attorney gives a rule to plead in the book of orders, agreeable to the following rules:

" *Trin.*

" *Trin.* 1753. It is ordered, that upon all proceſs
" to be iſſued out of this court, returnable the
" firſt or ſecond return, or on any day before the
" ſecond return of any term where the defen-
" dant ſhall at the return thereof enter an ap-
" pearance, or file ſpecial bail (as the caſe may
" require), the plaintiff may deliver over a de-
" claration to the defendant's clerk in court;
" and if the plaintiff declares in *London* or
" *Middleſex*, and the defendant lives within
" twenty miles of *London*, ſuch defendant ſhall
" plead to the ſaid declaration within four days
" after the delivery thereof, without any im-
" parlance; and in caſe the plaintiff declares in
" any other county, or the defendant lives
" above twenty miles from *London*, then the
" defendant ſhall plead within eight days
" after the delivery thereof, without any im-
" parlance; or in default thereof, the plaintiff
" may ſign judgment, a rule to plead being
" duly given, unleſs this court or one of the
" barons thereof ſhall think proper, on the ſpe-
" cial circumſtances of the caſe, to grant an
" imparlance; but no defendant ſhall be com-
" pelled to plead by virtue of this rule, un-
" leſs the declaration be delivered four days
" before the end of term in which the writ is
" returnable, with notice thereon indorſed of
" the time wherein ſuch defendant is to plead.

Writs returnable 1ſt or 2d return, or before 2d return on declaration delivered in London, or Middleſex, if defendant lives within twenty miles, to plead in four days after delivery;

if in any other county, or if defendant lives above twenty miles, 8 days;

or judgment by default.

Declaration to be delivered 4 days before the end of the term.

" It is ordered, that upon all proceſs of *quo mi-*
" *nus* to be iſſued out of this court, returnable
" the firſt or ſecond return, or any day before the
" ſecond return of any term, where the defen-
" dant ſhall be ſerved with a copy thereof pur-
" ſuant to the act of parliament for preventing
" frivolous and vexatious arreſts, the plaintiff
" may file a declaration in the office of pleas

Like rule in caſes of defendant's being ſerved with notice according to the ſtatute.

" of

" of this court *de bene eſſe* at the return of ſuch
" proceſs, and likewiſe give notice thereof to
" ſuch defendant by delivering an *Engliſh* notice
" written in a plain legible hand, to the ſaid
" defendant, or by leaving the ſame at the laſt
" or moſt uſual place of abode of ſuch defen-
" dant, ſignifying that there is ſuch a declara-
" tion filed in the ſaid office againſt ſuch de-
" fendant, at the ſuit of the plaintiff, and that
" unleſs ſuch defendant plead to ſuch decla-
" ration within four days after ſervice of ſuch
" notice, in caſe the plaintiff declares in *Lon-*
" *don* or *Middleſex*, and the defendant lives
" within twenty miles of *London*; but if the
" plaintiff declares in any other county, then
" within eight days after ſuch ſervice of ſuch
and judgment by default. " notice, judgment will be entred againſt ſuch
" defendant by default; and that from the time
" of ſerving of ſuch notice ſuch declaration
" ſhall be deemed well delivered to ſuch de-
" fendant, and not otherwiſe; and if the de-
" fendant doth not appear and plead within the
" times ſpecified in ſuch notice, the plaintiff
" having entred an appearance for ſuch defen-
Appearance having been entered according to the ſtatute. " dant according to the ſaid act, and having
" duly given a rule to plead, may ſign judg-
" ment, unleſs the court, or one of the ba-
" rons thereof, ſhall think proper on the ſpe-
" cial circumſtances of the caſe to grant an
" imparlance.

On bailable writs, declarations to be filed de bene eſſe, and notice to plead (as above) four days before the end of the term. " It is ordered that upon all proceſs of *quo*
" *minus* to be iſſued and made returnable as
" aforeſaid, where an affidavit ſhall be made
" and filed of the cauſe of action purſuant to
" the ſaid act, the declaration may be filed *de*
" *bene eſſe* at the return of ſuch proceſs with a
" notice to plead in manner before ſpecified;

" and

" and if the defendant puts in bail, and doth
" not plead within the time ſpecified in ſuch
" notice, judgment may be ſigned, a rule to
" plead being duly given without any other or
" further calling for a plea, unleſs this court
" or a baron ſhall grant an imparlance as afore-
" ſaid, and the plaintiff may in either caſe give
" notice of executing a writ of inquiry either
" by delivering a notice in writing to ſuch de-
" fendant, his attorney or clerk in court, or
" by leaving the ſame at his laſt or moſt uſual
" place of abode, but no defendant ſhall be
" compelled to plead by virtue of this rule,
" unleſs notice of a declaration be ſerved four
" days before the end of the term in which the
" writ is returnable.

and for want of a plea may ſign judgment,

and give notice of executing inquiry,

but no defendant ſhall be compelled to plead without notice of declaration four days before the end of the term.

" It is further ordered, that where any de-
" fendant ſhall appear to any writ of *diſtringas*,
" and the cauſe of action ariſeth in *Middleſex*
" or *London*, and the defendant lives in *Lon-*
" *don* or *Middleſex*, or within forty miles of
" *London*, ſuch defendant ſhall plead within
" four days after declaration delivered in ſuch
" action, a rule to plead being given; and if
" the cauſe of action ariſeth in any other coun-
" ty, or the defendant lives above forty miles
" from *London*, then ſuch defendant ſhall plead
" within eight days after the delivery of the
" declaration, a rule to plead being given, as
" aforeſaid."

If defendant appear to diſtring. and cauſe ariſe in London or Middleſex, or within 40 miles, he ſhall plead in four days, and in any other county or above 40, in 8 days, after declaration delivered.

This rule is made nearly conformable to the old rule in practice, relative to all proceſſes by attachment, which ſtill continues in force, and is hereafter ſet forth.

Nearly the like on proceſs by attachment.

The old practice concerning imparlances was that in all caſes the defendant had leave to im-

The old practice concerning imparlances.

parle

parle to the next term after the return of the proceſs, except the proceedings were by ſpecial writ, or the defendant was a priſoner, or under the contempt of the court, or the proceſs was againſt perſons privileged by the court.

But the preceding rules have altered the courſe of practice in this particular, and made it more conformable to the practice of the other courts.

What notice neceſſary of filing the bill where the appearance is entred by plaintiff according to the ſtatute.

By the ſtatute and the new rules above ſet forth, the notice required need only ſet forth the nature of the action; namely, in debt or caſe without mentioning for what, as that will appear by the declaration itſelf, and if there be any irregularity in the notice, or delivery of the declaration, the defendant muſt apply to the court to ſet the ſame aſide before the execution of the writ of inquiry. The notice muſt be in writing, but it is not neceſſary to ſerve it perſonally on the defendant, or make an affidavit of the ſervice.

Trin. 1753. defendant to plead in 4 days if within 40 miles, and action ariſe in London or Middleſex.

"It is ordered, that where any declaration "ſhall be delivered to any defendant, or his at- "torney or clerk in court, before the eſſoign "day of any term, and the defendant ſhall im- "parl until the next term, and ſuch defendant "ſhall live in *London*, or within forty miles "thereof and the cauſe of action ſhall ariſe in "*London* or *Middleſex*, ſuch defendant ſhall "plead to the ſaid declaration within the firſt "four days of ſuch next term, a rule to plead "being duly given, or in default thereof, the "plaintiff ſhall be at liberty to ſign judg- "ment."

There is a material variation in this rule from that three pages before, by which it appears as to the diſtance from *London*, that without an imparlance,

imparlance, if defendant lives within 20 miles of *London*, he muſt plead in 4 days, if further 8 days; if after imparlance, and he lives within 40 miles, he muſt plead in 4 days.

By the old rules, after an imparlance, the rules to plead were in all caſes eight days; ſo that if the defendant lives above forty miles from *London*, the cauſe of action aroſe out of *London* or *Middleſex*, the old rules take place.

Otherwiſe 8 days.

By the old rules it is ordered, "That if a "defendant appearing upon proceſs of con- "tempt duly ſued forth ſhall not, upon a de- "claration filed eight days before the term "ends, and a rule of eight days for anſwer, "plead thereunto, judgment may be entred "by *nil dicit* againſt ſuch defendant."

Appearance on contempts and declaration 8 days before the term ends, no imparlance.

"That every defendant againſt whom any "bill ſhall be filed as an accomptant, or pri- "vileged perſon, ſhall have licence to imparle "until the firſt return of the next term, unleſs "the plaintiff declaring ſhall give a rule to "plead of eight days before the end of the "term, or the court ſhall otherwiſe order."

Accomptant or privileged perſon may imparle, unleſs rule be given 8 days before the end of the term.

"That every ſpecial plea ſhall be put in, "and delivered to the plaintiff's attorney be- "fore the rule for anſwer be expired, and in "default thereof judgment is to be entred "againſt the defendant by *nil dicit* as afore- "ſaid."

Every ſpecial plea to be delivered before the rule to plead is out.

"That no pleas to the diſability of the "plaintiff's perſon or juriſdiction of the court "ſhall be put in after imparlance, and ſuch "pleas to the juriſdiction ſhall be put in by the "defendant in his own perſon, and under "counſel's hand, or otherwiſe not to be re- "ceived."

No pleas to the diſability or juriſdiction ſhall be put in after imparlance, and which ſhall be put in perſon.

No new aſſignment unneceſſarily.

" That the common bar, and new aſſignment be foreborn, where the certainty is contained in the declaration equivalent to a new aſſignment."

In pleading an outlawry the meſne proceſs need not be repeated.

" That in pleading of an outlawry, the meſne proceſs be not repeated, but the exigent and outlawry only joined to the commencing of the ſuit."

No plea in abatement after imparlance.

" That no plea in abatement ſhall be pleaded after a general imparlance."

Draft of the plea delivered to be copyed by plaintiff.

On delivering the plea, the draft of the declaration is returned by the defendant's clerk in court, to the plaintiff's clerk in court, indorſed with the general iſſue if ſuch is pleaded, or if the plea be ſpecial with the draft thereof for the plaintiff to make his copy.

Pleading, what.

The defendant's anſwer to the plaintiff's bill, is either by plea or demurrer, of both which there are two ſorts, *viz.* general and ſpecial.

Viz. general.

A general plea is called the general iſſue, and is a conciſe direct anſwer to the bill.

And ſpecial.

A ſpecial plea contains ſome particular matter either by way of excuſe or of juſtification or the like.

General iſſues in debt, &c.

The general iſſues in debt are *non eſt factum*, or *nil debet*, and in caſe are *non aſſumpſit*, or *non culpabilis*, and in treſpaſſes and aſſaults is *non culpabilis*.

To which plaintiff joins the ſimiliter.

To each of all which ſeveral pleas the plaintiff joins his *ſimiliter*, and concludes to the country, *Ideo fiat inde jurat'*, &c. as will be ſeen in the appendix.

It is a maxim in pleading, that the law requires a direct anſwer by confeſſion and avoidance, or by traverſe. See *Savile's Rep.* 86.

Special

Special pleas vary as the nature of the defendant's caſe requires and thoſe which moſt frequenly occur are the following. Special pleas various.

In actions of debt, *conditions performed*, *per dures*, *per minas*, *infra Ætatem*, *riens per deſcent*, &c.

In actions of treſpaſs, juſtifications of various kinds.

In actions of battery, *ſon aſſault* or juſtifications, which are alike various.

In actions for words, juſtifications alike various.

In the great variety of ſpecial pleadings, ſome are common bars, others new aſſignments with the pleadings thereupon, as in the other courts.

Outlawry, excommunication, or convictions may alike be pleaded here as in other courts in bar of any action, but theſe pleas muſt be put in the ſame term the action is filed, and not after an imparlance, unleſs it be by ſpecial imparlance or by order of the court.

A few of theſe ſpecial matters which are likely to happen, and yet not quite common, have been inſerted in the appendix, well ſettled by the moſt eminent ſpecial pleaders of their time.

By the ſtatute of 4 *Anne*, *cap.* 16. for the amendment of the law, It is enacted, " That " any defendant or tenant in any action " or ſuit, or any plaintiff in replevin, in any " court of record, may with the leave of the ſame " court plead as many ſeveral matters thereto, " as he ſhall think neceſſary for his defence." Defendant may plead ſeveral matters by leave of the court.

" Provided nevertheleſs, that if any ſuch " matter ſhall upon a demurrer joined be judg- " ed inſufficient, coſts ſhall be given at the de- " ſcretion of the court; or if a verdict ſhall be " found upon any iſſue in the ſaid cauſe for the " plaintiff Subject to coſts on demurrer or verdict, unleſs the judge ſhall certify in replevin good cauſe for it.

" plaintiff or demandant, coſts ſhall alſo be " given in like manner, unleſs the judge, who " tried the ſaid iſſue, ſhall certify that the ſaid " defendant or tenant, or plaintiff in replevin, " had a probable cauſe to plead ſuch matter " which upon the iſſue ſhall be found againſt " him."

Affidavit unneceſſary to ſupport the motion for leave.

There is no need of affidavit of facts to plead ſeveral matters without ſpecial order, but the court muſt be moved for leave to plead them, and they are generally allowed, though often inconſiſtent the one with the other.

Leave given by the court to plead ſolvit ad diem and plene adminiſtravit on affidavit made that defendant had fully adminiſtred,

In *Jones* adminiſtrator with the will annexed of *Broomhall* againſt lord *Strafford* adminiſtrator, of *Johnſon* knight, *in Sccio.* 12 *November* 1724. Mr. *Peer Williams* moved on behalf of the defendant for leave to plead to this action, which was debt upon a bond, (and appeared by the declaration to be twenty-nine years ſtanding) *ſolvit ad diem*, and *plene adminiſtravit*; but the court refuſed to grant the motion, unleſs the defendant would make an affidavit that he had fully adminiſtred; and this they ſaid, had been the practice of both the king's bench and common pleas; the like rules was made the ſame day between ——— and lord *Briſtol* (in an *indebitat' aſſumpſit*) who moved to plead *non aſſ.* and *plene adminiſtravit. Bunb.* 181.

the like in non aſſ and plene adminiſtravit.

But the affidavit has not ſince been thought neceſſary.

But the practice in the king's bench and common pleas ſeems altered ſince, for both courts allow the pleading double pleas, without any affidavit at all of the truth of any of the pleas, and notwithſtanding the above determination, it is ſo apprehended to be the practice in the exchequer.

Defendant

Defendant moved the court of king's bench, upon the above act for leave to rejoin double, but the court held that it only extended to the case of pleading at first. *Warren* and *Ivie*, *Trin.* 5 *Geo.* 2. *Str.* 908.

Cannot rejoin double.

Pleas in abatement are various, and for many causes, and must be pleaded within the rule of four days to plead, and cannot be pleaded after a general imparlance, unless the declaration be delivered in the vacation or too late in the term, so that the defendant is not bound by the rules to plead to it in the same term, in both which cases the defendant may within the first four days of the next term plead in abatement as of the preceding term; but if such plea be not delivered in time, (whether a rule to plead be given or not), such plea may be refused.

Pleas in abatement must be pleaded within the rules,

if declaration be delivered in vacation, he has till 4 days in next term.

If the declaration be delivered before the essoign day, the defendant hath four days in court to plead in abatement as of the precedent term.

If declaration be delivered before the essoign, defendant hath 4 days in term to plead in abatement.

Where defendant in his plea alledges he was always ready to do any particular act, such plea must be pleaded in like manner as pleas in abatement, or defendant must have leave of the court, or of a baron to plead it afterwards, except in the cases of pleading tenders, which have of late been received with more indulgence without an order, but the money in all pleas of tender must be paid into court.

Where it is alledged in plea that defendant is always ready, it is in the nature of a plea in abatement, and must be pleaded in like manner except tenders.

A man may tender too much, though a tender of too little is bad; and where a man does not know exactly what is due, he must at his peril

Defendant must take care to tender enough.

peril take care to tender enough. *Str.* 916. in *Aſtley* againſt *Reynolds*.

The cauſes of pleas in abatement.

The cauſes of abatement are variance, miſnomers, uncertainties, deaths, feme coverts, incapacities, diſabilities, repugnances, privileges, juriſdictions, miſconceptions, actions for the ſame matters, and ſuch like.

Affidavit annexed to plea of privilege refuſed for its defect.

A plea of privilege of clerk to a prothonotary in *C. B.* was ſet aſide, the affidavit annexed to it being that *this is a true plea*, and not that *the plea is true*, the ſtatute requiring that the affidavit ſhould eſtabliſh the fact, and not the legality of the plea. *Trin.* 12 *Geo.* 1. *Onſlow* againſt *Booth*, *Str.* 705.

Plea to the juriſdiction of a court is never ſworn to, but a foreign plea is.

Chumley againſt *Broom*, an action was brought in the king's bench on a bond made at *Cheſter*, and the plaintiff laid the venue in ſuch a place within the county palatine of *Cheſter*, which county was alſo in the margin of the declaration.

The defendant did not imparle, but pleaded by attorney that he is, and at the time of the action brought, was an inhabitant, and notoriouſly converſant at *Nantwich* within the ſaid county palatine of *Cheſter*, and ſo prayed judgment, if the court of king's bench ought to hold plea of this matter.

But the plaintiff rejected this plea, becauſe it was not ſworn by the defendant, taking it to be a foreign plea, and therefore he ſigned judgment for want of a plea.

A foreign plea is where the action is carried out of the county where it is laid.

Sed per Holt chief juſtice, a foreign plea is where the action is carried out of the county where 'tis laid, which in this caſe was not done, ſo that this is only a plea to the juriſdiction of the court which is never ſworn, ſo the judgment was ſet aſide. 5 *Mod* 335. *Style* 225. *Lit. Rep.* 236. 1 *Sid.*

Sid. 330. 1 *Saund.* 97. 1 *Mod.* 81. *Carth.* 402. *Paſch.* 9 *W.* 3. 12 *Mod.* 723. *Cholmeley* againſt *Bloom*, S. C.

Miſnomer ſet aſide as a ſham plea.

A bond was entred into to the plaintiff by the name of *Elizabeth*, in which name the action was brought; the defendant pleaded in abatement, that the plaintiff's name was *Iſabel*, and not *Elizabeth*; but upon motion this was ſet aſide as a ſham plea, *per totam Curiam*. *Monkhauſe* againſt *Hutchinſon*, *Feb.* 10, 1721. *Bunb.* 101. *in Sccio.*

Coverture of the defendant after the action will not abate the plaintiff's writ. L. Raym. 1525.

Jones plaintiff declared in *B. R.* againſt *Judith Parnell* upon ſeveral promiſes; ſhe appears by attorney by the name of *Judith King*, and pleads *non aſſumpſit*, and after a verdict for the plaintiff, ſhe and *Edward King* bring a writ of error *coram vobis*, and aſſign for error, that ſhe has appeared, and pleaded as a feme ſole, whereas at the time of her appearance and plea ſhe was married to the ſaid *Edward King*; the defendant in error pleads that this *Edward King*, and one *John Kitſon*, became bail for her as for a feme ſole, and ſo relies on it by way of eſtoppel, that they ſhall not be admitted to aver againſt the record; to this the plaintiff in error demurs.

Per Curiam; This is to abate the plaintiff's writ by the act of the defendant, which was never allowed; we muſt take it that at the time of bringing the action the defendant was a feme ſole, becauſe they pretend to carry it no farther than the appearance, and plaintiffs would be in a fine condition, if after they have arreſted a woman ſhe ſhall be allowed to overthrow their proceedings by a ſubſequent marriage; the judgment was affirmed. *Trin.* 2 *Geo.* 2. *King* and wife againſt *Jones*, *Str.* 811.

Mutual debts to be ſet one againſt another.

By 2 *Geo.* 2. *c.* 22. *ſect.* 13. It is enacted, "That where there are mutual debts between "the plaintiff and the defendant, or if either "party ſue or be ſued as executor or adminiſtrator, where there are mutual debts between "the teſtator or inteſtate and either party, one "debt may be ſet againſt the other, and ſuch "matter may be given in evidence upon the "general iſſue, or pleaded in bar, as the nature of the caſe ſhall require, ſo as at the "time of his pleading the general iſſue, where "any ſuch debt of the plaintiff, his teſtator or "inteſtate, is intended to be inſiſted on in evidence; notice ſhall be given of the particular ſum or debt ſo intended to be inſiſted on; "and upon what account it became due, or "otherwiſe ſuch matter ſhall not be allowed in "evidence upon ſuch general iſſue."

Though of a different nature,

By 8 *Geo.* 2. *c.* 24. the above clauſe was made perpetual, and it was therein further enacted, *ſect.* the 5th, "That by virtue of the ſaid clauſe "mutual debts may be ſet againſt each other "either by being pleaded in bar, or given in "evidence on the general iſſue, in the manner "therein mentioned, notwithſtanding that ſuch "debts are deemed in law to be of a different "nature, unleſs in caſes where either of the "ſaid debts ſhall accrue by reaſon of a penalty contained in any bond or ſpecialty; and "in all caſes where either the debt for which "the action hath been or ſhall be brought, or "the debt intended to be ſet againſt the ſame "hath accrued, or ſhall accrue by reaſon of "any ſuch penalty, the debt intended to be ſet "off ſhall be pleaded in bar, in which plea ſhall "be ſhewn how much is truly and juſtly due on "either ſide; and in caſe the plaintiff ſhall re-

but if a ſpecialty bearing a penalty it ſhall be pleaded in bar, and in ſuch plea ſhall be ſhewn how much is juſtly due.

"cover

" cover in any ſuch action or ſuit, judgment " ſhall be entred for no more than ſhall appear " to be truly and juſtly due to the plaintiff, " after one debt being ſet againſt the other, as " aforeſaid."

Safer by bar than notice.

It is in moſt caſes the ſafeſt way to plead them in bar, but if it is intended otherwiſe, *viz.* to give them in evidence on notice, ſuch notice muſt be given in writing under the plea of the general iſſue, by a perſon who will keep by him another copy and be preſent with it at the trial of the cauſe, ready to prove the delivery of the notice on the plaintiff's attorney or at his ſeat.

An inſtance why.

As it has been frequently the caſe, that the perſon who ſhould prove the notice was miſſing or had miſlaid his copy when ſuch evidence was to be given, the conſequences have taught many to prefer the pleading this ſet off at bar, rather than hazard the giving it in evidence by notice.

Notice of ſet off forgot, and defendant permitted to amend.

The defendant pleaded the general iſſue, but forgot to give notice at the ſame time of a ſet off, and upon motion in time, the court gave leave to withdraw the plea, in order to deliver the ſame plea again with a proper notice to ſet off, and ſaid it had been done ſo before. *Eaſter* 20 *Geo.* 2. *Blackborn* againſt *Mathias*, *Str.* 1267.

Statute of limitations replied to a ſet off.

The ſtatute of limitations may be replied to a plea of ſet off. *Str.* 1271. *Remington* againſt *Stevens*.

Pleas in abatement conclude to the bill, and in bar to the action.

Pleas in abatement conclude to the bill and pray that the ſame may be quaſhed; and pleas in bar conclude to the action and pray judgment, whether theplaintiff ought to have or maintain

maintain his action thereupon againſt the defendant.

Any thing may be given in evidence upon the general iſſue in an action of debt upon a ſtatute.

It was held by *Hale* chief baron in *Trin.* 14 *Car.* 2. *in Sccio. Hamond qui ſequitur tam, &c. quam* againſt *Taylor*, *Hard.* 231. that any thing in the ſame ſtatute, upon which the ſuit is commenced, may be given in evidence, but if it be in another ſtatute, it muſt be pleaded; but that ſince the ſtatute of 21 *Jac.* 1. upon the general iſſue any thing may be given in evidence, and excuſe of the party.

A right of fiſhery pleaded by preſcription naught, without ſetting forth of what kind, or to what appertaining.

In *Eaſter* 17 *Car.* 2. *in Sccio. Hard.* 407. *Anonymous.* In treſpaſs *quare clauſum fregit*, the defendant juſtified, becauſe he ſaid he had a right of fiſhing there by preſcription, but does not ſet forth what kind of fiſhery he claimed, *viz.* whether *liberam*, *ſeparalem*, or *communiam piſcationis*, nor whether he has it as appertaining to a manor, meſſuage, *&c.* or not; but makes it a meer perſonal thing. And for that cauſe the plea was held naught *per Cur. Vide* 7 *Hen.* 7. 4 *Edw.* 4. 33. *Dyer* and *Yelverton's Rep.* 7 *Jac.* where a difference is taken betwixt an eaſement or liberty only, and an intereſt an eaſement, as a way, *&c.* may be claimed, without ſaying to what it appertains; but a common, which is an intereſt, cannot. So here, *&c.*

Of paying money into court.

The court on motion will give the defendant leave to pay money into court.

The plaintiff's attorney having given a rule to plead in the book of orders according to the rules herein before mentioned. If the defendant admits that he is indebted to the plaintiff, but not to the amount of what the plaintiff demands, and no compromiſe can otherwiſe be made,

made, the defendant's attorney may apply by motion to the court for leave to pay ſuch ſum as he thinks is due into court, ſubject to the coſts of ſuit to that time, conformable to the following rule.

Mich. 1764. it is ordered, "That where any "defendant in any action brought in the office "of pleas of this court ſhall pay to the plain- "tiff in ſuch action, or to his attorney, any "ſum of money which he admits to be due on "ſuch action, together with coſts to be taxed "by the deputy clerk of the pleas, if the plain- "tiff accepts thereof in full diſcharge of ſuch "ſuit, then all proceedings in the ſaid action "ſhall be ſtaid; but if the plaintiff doth not "accept thereof in full diſcharge of ſuch ſuit, "the defendant ſhall bring ſuch ſum of money "which he admits to be due into court, and "the ſaid ſum of money ſo brought into court "ſhall be conſidered as ſtruck out of the de- "claration, and be paid out of court to the "plaintiff, or his attorney; and upon the trial "of the iſſue between the parties, the plaintiff "ſhall be permitted to take a verdict for ſo "much only as he ſhall prove beyond ſuch "ſum."

And ſuch money ſhall be conſidered as ſtruck out of the declaration, and paid to the plaintiff, and the plaintiff ſhall be permitted to take a verdict for only what he can prove more.

Paying money into court is often practiced where a tender cannot be pleaded, or where the parties differ as to the ſurrender from the defendant to the plaintiff.

In what caſes money is to be paid into court.

The defendant may before he pleads (but not after plea pleaded) move the court for leave to pay the money into court as aboveſaid.

Muſt be moved for before plea pleaded.

If the plaintiff proceeds to trial for more it will of courſe be at the peril of coſts, and it will be neceſſary that the defendant ſhould pro-

If plaintiff proceeds for more it will be at

duce

the peril of coſts.

duce his rule for paying money into court at the trial.

In what caſes the court will not give leave to pay money into court.

In debt for rent, and in covenant and breach for nonpayment of rent, and in trover for money, the court will give leave to pay the money into court, but not in the caſe of trover for goods.

In trover for pictures, the court refuſed to let the defendant bring them into court, for the action is not for the thing, but damages, and they may not now be in as good a condition as they were before. *Salk.* 557. A caſe of *Blackborn* againſt *Freeman* was cited, where a rule was taken for bringing in a watch-chain; but in fact the court ſaid the motion was denied. *Str.* 1192. *Olivant* againſt *Perineau.*

Non aſſumpſit infra ſex annos pleaded after moved in court, but ſet aſide.

In *Mead* againſt *Wyndham*, *Feb.* 9. 1721. *Indebitatus aſſumpſit* for goods ſold and delivered; the defendant moved, that upon bringing ſix pounds into court it might be ſtruck out of the declaration, *&c.* and afterwards pleaded *non aſſumpſit infra ſex annos:* it was now moved by Sir *Conſtantine Phipps* that the plea might be ſet aſide, and the defendant be obliged to plead the general iſſue, which the court ordered accordingly, the bringing the money into court being a ſort of an admiſſion that the promiſe was within ſix years: then Mr. *Bootle* for the defendant moved to withdraw his money out of court, it being in the maſter's hands, and in the power of the court; but that they would not permit. *Bunb.* 100.

In debt for a fine ſet in the court of a manor you cannot pay money into court.

In *Gold* againſt *Fream*, *Feb.* 1. 1722. in an action of debt for fifteen pounds ſet for a fine in the court of a lord of a manor, the court refuſed to let the defendant bring four ſhillings

and

and two pence into court, &c. as had been done in debt for rent, covenant, &c. *Bunb.* 124.

Money paid into court, and verdict for the defendant, the plaintiff being a pauper ſhall have it paid out to him.

In *Lee* againſt *Holland*, *June* 17, 1730. *Indebitatus aſſumpſit*, the defendant brought ſixteen ſhillings into court; upon the trial there was a verdict for the defendant; and now the plaintiff moved that he might have the ſixteen ſhillings out of court, though the verdict was againſt him, which was ordered accordingly. But *nota*, the plaintiff was a *pauper*, otherwiſe the defendant would have had the ſixteen ſhillings towards his coſts. *Bunb.* 287. 11 *Hen.* 7. *cap.* 12.

An executrix ſhall not pay coſts though a greater ſum is paid into court than ſhe recovers by verdict.

In *Knight* executrix againſt the ducheſs of *Hamilton*, *Eaſter* 1719. action upon the caſe upon an *indebitatus aſſumpſit*, the defendant brought ſixteen pounds into court with the uſual motion, that the plaintiff (who was an executrix) ſhould proceed at the peril of coſts: at the trial the plaintiff proved, and had a verdict for only thirteen pounds; and it was now moved that the plaintiff ſhould pay coſts, and that the three pounds overplus paid into court ſhould be reſtored to the defendant, which laſt part was granted; but the court would not make the plaintiff (being an executrix) pay coſts: but *quære* if the plaintiff ſhould not have coſts till the time of the rule. *Bunb.* 44.

If the coſts are not paid on bringing money into court, the plaintiff may go on and cannot have an attachment.

Hand againſt Lady *Dicely in aſſumpſit*; the defendant brought 8 *l.* into court on the uſual terms of paying coſts to that time; the plaintiff took it out, and taxed his coſts, and ſerved the defendant's attorney, and they not being paid went on to trial, and obtained a verdict for 7 *l.* 18 *s.* 0 *d.* The defendant inſiſted that he ſhould have no coſts for his ſubſequent proceedings, ſince it appeared that he was overpaid: but the court

court held, that as to the coſts, it was to be conſidered as if no motion had been made, the defendant not having fulfilled the terms of her own rule, in which caſe it is not uſual to grant an attachment; but the plaintiff goes on, it being only a conditional rule. They ſaid they would make him allow upon the execution for the 8 *l.* he had taken out of court, and ordered him the *poſtea* in order to tax his whole coſts. *Str.* 1220.

Of Oyer.

If plaintiff by his declaration makes a profert hic in cur', defendant is intitled to oyer and copy of the will, and ſhall have ſuch time to plead after, as he had when he demanded oyer.

If the plaintiff by his declaration makes a *profert hic in cur'* of any deed or other writing, ſuch as letters of adminiſtration or the like, the defendant may pray oyer thereof, and alſo a copy thereof, if he requires it, paying 4 *d. per fo.* for the copy, and ſhall have ſuch time after to plead as he had when he demanded oyer, but he is not bound to inſert it in his plea.

Oyer ought not to be diſpenſed with, tho' ſworn to be loſt.

The plaintiff declared in covenant, making a profert of the counterpart executed by the defendant, and aſſigned the breach in non-payment of rent, the defendant demanded oyer; and upon ſearch the plaintiff could not find it; and upon affidavit of his inability to give oyer, applied to the court to diſpenſe with it, the defendant having the original leaſe, and therefore not inconvenienced; but the court, on conſideration, declared they could not do it; the plaintiff was bound to make a profert, elſe his declaration would be demurred to. The defen-

defendant is by law intitled to oyer, and the denial of it would be error. They ſaid, this does not depend upon any particular rule of court, but on the general right of law, which the court cannot diſpenſe with. 1 *Mod.* 266. It was the plaintiff's fault to bring the action, before he had the deed, or a proper diſcovery; and it is not like the caſe of a defendant whoſe deed is in the plaintiff's hands, where the court will grant imparlances from time to time, until it is produced. *E.* 16 *Geo.* 2. *Soreſby* againſt *Sparrow*, *Str.* 1186.

If defendant's deed is in the hands of plaintiff, the court will grant imparlance till produced.

In debt upon bond the defendant craved oyer, which the plaintiff was not able to give him, the bond being in the hands of Mr. *Strickland*, a gentleman of the bar, who had refuſed to produce it, and enable the plaintiff to force the defendant to plead. The court being moved againſt Mr. *Strickland*, his excuſe was, that the bond was left with him to wait the event of a ſuit ſtill depending. *Et per curiam*, That is a matter the defendant may avail himſelf of by plea, and we will not determine it upon motion: there muſt be a rule on Mr. *Strickland* to give oyer of the bond, and produce it at the trial, if required by the plaintiff. *Mich.* 17 *Geo.* 2. *Str.* 1198.

If in the hands of a third perſon, on condition the court will order oyer to be given, and the third perſon to attend the trial to give evidence of the condition.

In *Adams* againſt the duke of *Grafton* 260. *H.* 1727. an action was brought by the indorſee of a promiſſory note payable to *A.* or order; and it was moved before the trial, on behalf of the defendant, that the plaintiff might produce the note, and leave it with his attorney, in order to be inſpected by the defendant, his attorney, *&c.* on a ſuggeſtion that the note was forged; and it was inſiſted for the defendant, that ſince even a bond, upon ſuch motion, might be pro-

Plaintiff is not obliged on motion to produce a note of hand, it being his evidence, and the ground of his action.

duced, much more might a note: but it was anſwered by the counſel for the plaintiff, and *per curiam*, Though a bond might be produced, being under hand and ſeal, yet that was upon this reaſon, that the plaintiff declares upon it with a *profert hic in cur'*; yet there is no inſtance that in this, or ſuch a caſe, a plaintiff was ever obliged to produce his evidence of what is the foundation of his action; and the ſtatute of 3 & 4 *Ann. cap.* —. makes no difference between theſe notes and inland bills of exchange, but in the point of pleading; and there is no inſtance ſince that ſtatute (which muſt have often happened) that ever ſuch a motion was made or granted; nor before that ſtatute, that ever a bill of exchange was produced upon ſuch motion. *Bunb.* 243.

Of dilatory pleas.

No dilatory plea to be received unleſs on affidavit.

By the ſtatute of 4 *Ann. cap.* 16. *ſect.* 11. "No dilatory plea ſhall be received in any court "of record, unleſs the party offering ſuch plea, "do by affidavit prove the truth thereof, or "ſhew ſome probable matter to the court to "induce them to believe that the fact of ſuch "dilatory plea is true."

Subſtance of the affidavit.

The affidavit uſual upon this occaſion is, that the ſubſtance and matter of fact in the plea hereunto annexed is true.

The rule of this court made in Trinity 1753, concerning dilatory pleadings, is as follows:

Rule concerning dilatory pleadings.

"Whereas in divers actions and ſuits com-"menced in this court, the plaintiff many times "in pleading concludes to the country; and "the defendant not being obliged to join iſſue

"or

" or demur till four days after, the plaintiffs " are thereby delayed: for the preventing of " which for the future, it is ordered, that in " all cafes where the plaintiff concludes to the " country, the plaintiff's attorney or clerk in " court may give notice of trial at the time of " delivering his replication or other fubfequent " pleading, in cafe iffue fhall be joined there- " in, or of executing a writ of inquiry in default " of joining iffue, which fhall be deemed good " notice of trial, from the time of the delivery " of fuch replication or other fubfequent plead- " ing, in cafe iffue be fo joined; and if the de- " fendant doth not join iffue on fuch replica- " tion or other fubfequent pleading, and the " plaintiff doth fign judgment for want there- " of, the defendant's attorney or clerk in court " fhall take notice of executing a writ of in- " quiry from the time that notice thereof was " given as aforefaid."

Where plaintiff concludes to the country he may give notice of trial;

or may give notice of executing inquiry in default of joining iffue immediately.

Of demurrers.

By the old rules, it is ordered, " That ac- " cording to the ftatute of 27 *Eliz.* upon de- " murrers, the caufes be efpecially affigned, " and not be involved with general unapplied " expreffions of double meanings, made up of " negatives impregnant, uncertain, and want- " ing form, *&c.* but to fhew efpecially where- " in, that the other party may either join in " demurrer or amend, paying coffs, as the cafe " fhall require, or difcontinue his action."

Demurrer not to be involved with incertainty.

" That it be declared, that matters of form, " as well on the part of him that demurs as of " him that joins in demurrer in all parts of the " plead-

Matters of form difcharged, except fpecially affigned in demurrer.

" pleading are diſcharged, unleſs ſuch as are
" ſpecially aſſigned upon the demurrer."

Demurrer where joined the judges ſhall give judgment according to law, without regarding defects in the proceedings, except what ſhall be ſpecially ſet down.

By the ſtatute of 4 *Ann. cap.* 16. it is enacted, " That where any demurrer ſhall be joined, and entered in any action or ſuit in any court of record within this realm, the judges ſhall proceed and give judgment, according as the very right of the cauſe and matter in law ſhall appear unto them, without regarding any imperfection, omiſſion or defect in any writ, return, plaint, declaration, or other pleading, proceſs or courſe of proceeding whatſoever, except thoſe only which the party demurring ſhall ſpecially and particularly ſet down and expreſs, together with his demurrer, as cauſes of the ſame, notwithſtanding that ſuch imperfection, omiſſion or defect might have heretofore been taken to be matter of ſubſtance, and not aided by the ſtatute made in the 27 *Eliz. c.* 5. intitled, 'An act for the furtherance of juſtice, in caſe of demurrer and pleadings, ſo as ſufficient matter appear in the ſaid pleadings, upon which the court may give judgment, according to the very right of the cauſe; and therefore no advantage or exception ſhall be taken of or for an immaterial traverſe, or of or for the default of entering pledges upon any bill or declaration; or of or for the default of alledging the bringing into court any bond, bill, indenture or other deed whatſoever mentioned in the declaration or other pleading; or of or for the default of alledging of the bringing into court letters teſtamentary, or letters of adminiſtration; or of or for the omiſſion of *vi & armis & contra pacem*, or either of them; or of or for want of

No advantage to be taken of the ſeveral defects here enumerated.

" of averment of *hoc paratus eſt verificare*, or " *hoc paratus eſt verificare per recordum*; or of or " for not alledging *prout patet per recordum:* " but the court ſhall give judgment according " to the very right of the cauſe as aforeſaid, " without regarding any ſuch imperfections, " omiſſions and defects, or any other matter " of the like nature, except the ſame ſhall be " ſpecially and particularly ſet down and ſhewn " for cauſe of demurrer."

Though the want of form is not ſufficient upon a general demurrer; yet, it being made a cauſe of demurrer, may prevail; for the judge is to have no regard to want of form, but only to ſuch cauſes as the party demurring ſhall ſet down; and, if there be want of ſubſtance, a general demurrer will ſuffice, without ſhewing the cauſe.

Want of ſubſtance cauſe for a general demurrer.

A general demurrer ought not to be waived, but a ſpecial demurrer may.

A general demurrer ought not to be waived, but a ſpecial may.

Gwynne againſt *Johnſon*, *Eaſter* 1745, *in ſcio.* Rule to ſhew cauſe why the defendant ſhould not be at liberty to withdraw his demurrer to plaintiff's replication on payment of coſts. No further rule made.

Defendant, when bound to plead an iſſuable plea, may demur to the replication.

Defendant bound to plead iſſuably may demur to the replication.

If there is good cauſe of demurrer, the plaintiff's attorney will think it adviſable to amend, which he may by a baron's order, on payment of coſts.

If cauſe for demurrer plaintiff may amend on paying coſts.

If iſſue to part, and demurrer to the reſt, notice of trial may be given notwithſtanding.

If there be an iſſue as to part, and a demurrer to the reſt, notice of trial may be given at the ſame time you are proceeding to argue your demurrer.

If plaintiff refuſes to join in demurrer after a rule of four days, defendant may have judgment.

If the plaintiff refuſes to join in demurrer, a rule of four days being given in the book of orders, judgment of *non proſ.* may be ſigned the 5th day for want of a joinder in demurrer.

Demurrer common to all the courts without variation.

A demurrer to any action, plea or replication, *&c.* being common to all the courts, without variation even in matters of form, no more need be ſaid here of them than inſerting the following rules in regard to the practice.

Where defendant demurs he ſhall accept of notice of inquiry on the back of the joinder in demurrer, and where defendant pleads a dilatory plea which plaintiff may demur to, defendant ſhall accept the notice of inquiry on the back of the demurrer.

In *Trin.* 1753. it is ordered, " That in all " caſes where the defendant demurs to the " plaintiff's declaration, replication, or other " ſubſequent pleadings, the defendant's attorney or clerk in court ſhall be obliged to accept of notice of executing the writ of inquiry on the back of the joinder in demurrer; and in caſe where the defendant pleads a dilatory plea, to which the plaintiff is obliged to demur; in ſuch caſe the defendant's attorney or clerk in court ſhall be obliged to accept of notice of executing a writ of inquiry on the back of ſuch demurrer.

Where plaintiff demurs, and defendant joins, plaintiff may move for a concilium

" And it is further ordered, that in all caſes " where the plaintiff demurs to the defendant's " plea, rejoinder, or other ſubſequent pleading, and the defendant joins in demurrer, " the plaintiff ſhall be at liberty to enter the

" iſſue

" iſſue in law upon the roll, and move for a " *concilium*, without giving the defendant any " rule to bring in the book of demurrer." without giving a rule to bring in the book.

As the caſes reported on demurrers in the office of pleas may be inſtructive to the ſolicitor by their variety, ſeveral of them are inſerted as follows, with as much brevity as is conſiſtent with perſpicuity and the points determined.

In *ſccio*. *Savile* 54. one *Ronyon* recovered in an action of account againſt *Atward*, and *capias ad computand'* was awarded, by which *Atward* was taken, and entered into the account before *John Thompſon* auditor, and *Richard Litton*, one of the clerks and attorney in the office of pleas, being aſſigned auditors, and before them pleaded a releaſe of one *James Berde*, by whoſe hands he received the money to give over to *Ronyon*. A diſcontinuance is in the diſcretion of the court.

Upon this plea *Ronyon* demurred in law, and a day was appointed for the argument of this caſe. *Atward* ſaid the cauſe is diſcontinued, which had no continuance from *Hilary* term to *Eaſter* term. *Fenner* ſaid, that in the Common Bench no diſcontinuance ſhall be entered, if not after the year: but at any time within the year the cauſe may be continued. And it was held clearly, that it is in the diſcretion of the court to enter a diſcontinuance or not; and it was diſcontinued.

Keen againſt *Godwin*, *Paſch*. 1728, *May* 14, *in ſccio*. It was adjudged upon demurrer *per curiam*, that an award for the parties to give mutual releaſes to the day of the date of the award was good; although it was objected, that being beyond the time of the ſubmiſſion, it was void. To which it was anſwered *per* An award of the leaſes to the date of the award is good.

curiam, that awards have been more favoured of late than in former times; tender of a releaſe to the time of the ſubmiſſion is good, though the award mentions releaſes to the time of the award; for it ſhall be good for ſo much as the arbitrators have authority to do, though they exceed their authority.

In ſupport of the objection were cited 1 *Sid.* 154. 1 *Keb.* 569. 1 *Rol. Abr.* 242. *b.* 4. 3 *Lev.* 188, 344. *Nota*, This was to ſupport the diſtinction between a general and an expreſs releaſe. *Lutw.* 549. *e contra.* 1 *Salk.* 74. *Abraham* and *Brandon. Hil.* 12 *Ann.* in *B. R. Bunb.* 250..

A proviſo coming after the ſolvendum is a condition ſubſequent, and the party having time to perform it during her life, unleſs haſtened by requeſt, an averment thereof in the declaration is meerly nugatory.

Crawley verſus *Fenne*, Eſq; in debt, *Mich.* 1655. *in ſccio.* the plaintiff declares, that upon the 18th day of *Auguſt* 1654, at *London*, in St. *Mary-le-Bow*, in the ward of *Cheap*, the defendant, by his writing obligatory produced in court, and bearing that date, did acknowledge himſelf to owe and be indebted unto the plaintiff in the ſum of 50 *l.* to be paid to her or her aſſigns at her day of marriage, or on the firſt day of *February*, which ſhould firſt happen; provided that the plaintiff do make good, juſtify and maintain the truth of the declaration given to the defendant, under her hand and ſeal, bearing even date with the ſaid writing obligatory; and avers, that although ſhe always hath been, and ſtill is ready to make good, juſtify and maintain the truth of the ſaid declaration; yet the defendant hath, and ſtill doth deny to pay the ſaid debt, to her damage of 20 *l.* To this declaration, after oyer of the writing obligatory, the defendant demurs.

Object. The declaration is vitious, becauſe it does not expreſs the contents of the declaration given

given under the plaintiff's hand and ſeal, which ought to be ſet forth, as in caſe of an obligation conditioned to perform covenants in an indenture, it muſt appear what theſe covenants were.

A condition precedent and condition ſubſequent, what.

Reſp. 1. The averment in the declaration, that ſhe was always ready, *&c.* needed not to have been expreſſed at all; the proviſo in the bill is a condition ſubſequent, and not precedent. It is not that which creates the debt; the debt ariſes by the plaintiff's marriage, or the coming of the firſt of *February*, which is paſt; and being a ſubſequent condition, it lies on the defendant's part to allege a breach of it; for it is for his advantage, 7 *Rep.* 9. *b. Ughtred*'s caſe, annuity granted for the exerciſe of an office: the plaintiff, in an action to recover his annuity, needeth not aver that he has exerciſed the office; and the difference there taken is betwixt a condition precedent and ſubſequent, 5 *Hen.* 7. 1. Annuity granted till the grantee be advanced to a benefice; he need not ſhew that he is not advanced. He quoted 21 *Ed.* 4. 36. *b.* 9 *Hen.* 6. 15, 16. where a difference is taken betwixt, where a condition is for the advantage of the obligee and of the obligor; he for whoſe advantage it is muſt plead it. Here he ſaid the proviſo was for the advantage of the obligor; for it comes after the *ſolvendum*, and conſequently the plaintiff not obliged to ſet it forth.

Reſp. 2. The proviſo here limits no certain time for the performance, and conſequently the plaintiff has time to perform it as long as ſhe lives, unleſs haſtened by requeſt, 22 *Ed.* 4. 43. Annuity *pro conſilio impendendo*; the defendant muſt demand counſel, and he denied it, before

the annuity be forfeited; ſo here the defendant ought to require the plaintiff to make good her declaration, *6 Rep.* 31. in *Bothie*'s caſe, where the defendant's preſence is requiſite, there the plaintiff has time during life, unleſs haſtened by requeſt; as in our caſe. But if the money had been made payable to the plaintiff when ſhe ſhould have proved, *&c.* then it would have been neceſſary for her to have ſet it forth; but here ſhe needs not, for the proviſo comes after the *ſolvendum*; wherefore the proviſo here being a condition ſubſequent, and the party having time to perform it during her life, unleſs haſtened by requeſt, which ſhe has not been; the averment in the declaration is merely nugatory, and the general demurrer ill: *quære quid inde venit. Hardres* 9.

An award naught, becauſe there is no ſubmiſſion, and becauſe it is repugnant in itſelf, and becauſe it awards what is not ſubmitted, and becauſe it is not definitive, and becauſe it concerns ſtrangers.

Hunter the elder and *Younger* verſ. *William Benniſon*, *Hil.* 1655. *in Scio.* In debt upon an obligation of 300*l.* dated 9th *May* 1653. the plaintiff declared that the defendant became bound to him as aforeſaid, the condition of the bond being, that if the defendant and *Thomas Benniſon*, their heirs, *&c.* do perform the award, which *W. K. W. L.* the ſaid *Thomas Benniſon* and *E. W.* with the umpirage of *W. W.* Eſq; ſhould make touching and concerning the title of the lands, meſſuages, barns and tenements called *Burrow*'s cloſe, *Holt* and *Stubbins*, with the appurtenances, and to give the title to whom it belongs, and of all other ſuits and differences depending betwixt the ſaid parties, or either of them, ſo as the ſame be tendred or ready to be delivered in writing under their hands and ſeals to them, or either of them, at or before tomorrow at 12 of the clock of the day, that then the defendant pleaded *nul award fait.*

The

The plaintiff replied, that after the enſealing of the ſaid obligation, and before the morrow after, *viz.* on the ſame ninth of *May* 1653. the ſaid arbitrators and umpire made an award concerning the premiſſes, as followeth, *viz.*

That *Hunter* the elder upon the ſecond day of *March* then next following ſhould pay to the ſaid defendant *William Benniſon* 7 *l.* 10 *s.* for every acre of the lands aforeſaid, the barn included, to be meaſured by an able meaſurer in the preſence of the arbitrator and umpire, or ſome or two of them, after ſeven yards to the poll, at the equal charge of both parties; the ſaid payment to be made in the church porch of *Greſſingham* in that county. Upon payment whereof the ſaid *William Benniſon*, his heirs or aſſigns ſhould paſs, convey or ſurrender to the ſaid *Thomas Hunter* or his heirs, or ſuch as he ſhould appoint, all the ſaid lands with warranty againſt him and his heirs, and all claiming under him; or in default of ſuch payment the ſaid *Thomas Hunter* and his heirs ſhould ſeal and deliver a releaſe of all his claim to the ſaid lands and every part thereof, and a general releaſe for all actions, ſuits and demands. And that all ſuits and controverſies, and all judgments, executions and condemnations had againſt any of the ſaid parties, their children, ſervants and agents, ſhould ceaſe and be no farther proſecuted. Then he lays for breach,

That the ſaid award was tendred on the ſaid 9th of *May* according to the effect of the condition, and avers an admeaſurement made the ſaid 2d day of *March* 1653. and the lands upon the ſame contained 12 acres, according to ſeven yards to the poll; and that 80*l.* was due to be paid, which the ſaid *Thomas Hunter* the elder tendered

tendered accordingly, and the defendant refuſed, and that the ſaid *Thomas Hunter* did requeſt him to paſs a ſurrender to him and his heirs, which he refuſed.

The defendant demurs, and the plaintiff joined in demurrer.

Hardres argued *pro defendente* that there was good cauſe of demurrer. 1. Becauſe the ſubmiſſion is void. 2. Becauſe the award is void.

1. There is no ſubmiſſion, and then there can be no good award. To make a good award there are five things requiſite. 4 *Eliz. Dyer* 216. *b.* 1. Matter of controverſy. 2. A ſubmiſſion. 3. Parties to the ſubmiſſion. 4. Arbitrators, and 5. giving up the award; now here wants a ſubmiſſion: for it appears by the condition, that the defendants and *Thomas Benniſon* are to perform the award of four, whereof the ſaid *Thomas* is one: ſo that *Thomas Benniſon* is both a party ſubmitting and a judge; he is one that muſt perform the award, and an arbitrator too; which is void in law. Now it is a principal challenge, if an arbitrator be one of the jury; much leſs muſt the perſon be both arbitrator and party.

2. The condition is repugnant in itſelf, *viz.* That the arbitrators, together with ſuch a perſon being umpire, ſhould make an award; for it is a contradiction that both the arbitrators and the umpire too ſhould make it: for an umpire is a judge by himſelf, and cannot be an arbitrator.

3. The award is void. 1. For that the matter ſubmitted is title to lands in particular; and that they ſhall give the ſame to whom they appertained; ſo that the award is in the nature of a bargain and ſale betwixt the parties; the one being

being to pay ſo much money to the other for every acre of land; but the title is not determined to whom the lands do appertain as it ought to be, and therefore it is naught; for a matter ſubmitted in particular is not determined; and where on a thing in particular is ſubmitted, it muſt be particularly determined one way or other. 8 *Rep.* 98. *Baſpole*'s caſe, 4 *Eliz. Dyer* 216.

2. The award is naught, becauſe a matter not ſubmitted is awarded; *viz.* that the lands ſhall be meaſured by others in their preſence, which is void in law; for they cannot give their power to another. 19 *Ed.* 4. 1.

3. The award is that the admeaſurement ſhall be at the equal charge of both parties; which is void, becauſe not within the ſubmiſſion. *Paſch.* 23 *Car. B. R. ſup. Capel* verſ. *Alten*, *Trin.* 1650. *Ent. Hill.* 1649. *rot.* 673. *B. S. Hale contra Maſſy.*

4. The award is naught, becauſe it is not definitive, but conditional, *viz.* That the plaintiff ſhall pay, *&c.* or in default thereof, that the plaintiff ſhall releaſe, *&c.* all his right. For an award is a judicial act, and ſuch acts muſt be definitive and not conditional. *Paſch.* 13 *Car. R. in Banc. Com. Loggins contra Blagrave*, 5 *Rep. Samon*'s caſe 77. *b.*

5. The award is void becauſe it concerns ſtrangers to the ſubmiſſion, it is that all controverſies, judgments and condemnations againſt the parties, their children, ſervants or agents, ſhall ceaſe. *Vide Samon*'s caſe before cited. *Trin.* 5 *Car. B. R. Humphreys* and *Ladd*, and prayed judgment, *&c. Hard.* 43.

Exemplification of a recovery in Wales may be given in evidence, if the record is loſt, but if not loſt, a copy muſt be proved on oath.

Olive againſt *Gwynn*, *Trin.* 1658. *in Sccio.* Ejectment for lands in *Brecknockſhire* in *Wales*; upon Not guilty pleaded, and a trial there, the defendants gave in evidence a recovery in a writ of *quod ei deforciat*, which is their writ of right, at the great ſeſſions there; and iſſue being tendered thereupon, the defendants produced an exemplification of the record, under the ſeal of the great ſeſſions, but not the record itſelf; and the plaintiff demurred to the evidence; and the queſtion now was, whether the exemplification maintained the iſſue for the defendants or not?

Trevor pro quer. That it is in evidence. He ſaid that leiger books, and ſuch paper books cannot be exemplified, but when offered in evidence, muſt be themſelves produced: but yet that exemplification of pope's bulls, under the biſhop's ſeal, had been admitted in evidence in Sir *Thomas Read*'s caſe, *Hill.* 22 *Jac. B. R.* but the common law took no notice of exemplifications, till the ſtatutes of 3 & 4 *Ed.* 6. and 23 *Eliz. cap.* 3. which ſtatutes concern letters patents only, as was reſolved in *Page*'s caſe 5 *Rep.* and in 5 *Ric.* 2. *Parl. Roll*, *num.* 85. there is an anſwer in parliament that the law admits of no exemplification of proceſs or pleadings.

Obj. By the act of 34 *Hen.* 8. concerning *Wales*, and the government thereof, it is enacted, that exemplifications of records ſhall be allowed.

Reſp. There are but two repertories of records in *Wales*, the one in *North Wales*, the other in *South Wales*; and this ſtatute extends to the *Welch* men only; as appears *Plow. Com'*.

Obj.

Obj. 27 *Eliz. cap.* 9.

Reſp. That act extends only to fines and common recoveries, and the court here cannot take notice of the exemplification of a record there, where the juriſdiction is limited; as appears *Cro. Car.* 34. upon a record removed hither. And *Hil.* 7 *Car. B. R.* in *Price*'s caſe, the judge cited authority, that if the record of a judgment there were removed hither, an action of debt would not lie upon it, nor was any ſuch evidence ever offered ſince 34 *Hen.* 8. And a law diſuſed is as it were become null. *Vide Littleton* upon the ſtatute of *Merton* concerning diſparagement. *Hob. Rep.* 78. *St. John*'s caſe, 6 *Rep. Gateway*'s caſe, and 37 *Ed.* 3. *Rol. Parl. num.* 10. the barons and ſerjeants at law were yearly to make an inquiry what laws were uſed, and what not: alſo the exemplification is only of the inrolment of the record, and not of the record itſelf. 2 & 3 *Eliz. Dyer* 187, 275. *Bro. Record* 49. *Co. Inſt.* 225. and *Dyer* 369. *Scire facias* does not lie upon the tenor of a record. And by 15 *Aſſ.* 16. a record in *Wales* cannot be vouched here; and in a caſe tried at lent aſſizes 1656. ſuch an exemplification was not admitted for evidence upon iſſue of *nul tiel record* in ejectment, and ſo concluded *pro quer.* But it was ſaid on the other ſide, that here the iſſue is not upon *nul tiel record*, but the general iſſue; and the exemplification comes in upon evidence only to the jury, and may be ſufficient ground for them to find for the defendant. *Et adjornatur.*

At another day *Atkins* argued *pro defendente*, he cited *Newy*'s and *Scholaſtica*'s caſe, *Plow. Com.* 411. where the chirogragh of a fine was given in evidence to the jury, upon a general

iſſue

iſſue in aſſize. *Dyer* 239. *b.* The jury find a private act of parliament. *Dyer* 167. *Conſtat of a Patent*, 5 *Rep. Page*'s caſe. *Bro Monſtrance de faits* 68. The difference is betwixt a plea of a record and evidence upon a general iſſue, in *Whitehead*'s caſe, *Temp.* of *Wylde* chief baron. The court held an exemplification of a recovery, under the ſeal of the mayor of *Briſtow*, to be good evidence to a jury; and the ſtatute of 27 *Eliz.* ſeems direct in the point. *Vide* 39 *H.* 6. 4. *Dyer* 233. *Bro. Records* 65.

Upon a debate in *Michaelmas* term after, it was agreed that a ſworn copy of a record in *Wales* might be given in evidence; but it is ſaid that an exemplification could not, becauſe the court here ought not to take notice of any ſuch inferior ſeal; but if it were exemplified under the great ſeal, then it would be evidence and proof although the record itſelf were loſt; but whilſt the record itſelf is in being, no exemplification under any other ſeal ſhall be admitted. But it was ſaid on the other ſide, that it was held by the judges at *Serjeants Inn* upon a demurrer to evidence in *Whitehead*'s caſe, that an exemplification under the ſeal of the mayor of *Briſtol*, of a recovery there, ſhould be given in evidence, though the record itſelf could not be found. And ſo it was at the next aſſizes; and *per cur.* trials in the next adjoining county to *Wales* are not by any ſtatute law, but by preſcription; and they are tantamount to trials within *Wales*, where it is admitted that ſuch evidence is good being within the ſame juriſdiction; *& adjornatur.*

At another day *Baldwin* argued for the plaintiff that it is no evidence, becauſe the effect of the record only is expreſſed, whereas the record

itſelf ought to ſet forth *in hæc verba*, 3 *H.* 6. 4. *Mich.* 21 *Car. B. R. rot.* 440. *Wright* and Sir *Paul Pinder*, in evidence to a jury, to prove a *diem clauſit extremum* out of the exchequer, the record itſelf could not be found, but a warrant for it, and an entry of it in the docquet book was proved, and upon a demurrer it was adjudged to be no evidence; becauſe a record cannot be proved but by itſelf. *Vide Raſt. Entries* 318. 1 & 2 *Ph. & Mar. rot.* 13. *B. R. John* verſ. *Langley*. The recital of a leaſe without ſhewing it, ruled to be no evidence upon a demurrer. *Vide Bro. Records* 74. *N. B.* 144. 28 *Aſſ.* 14. 9 *Hen.* 7. 9. *Dyer* 227. *Plow. Com.* 232. *Dyer* 236. No exemplification is evidence but in the ſame court to prove a record upon *nul tiel record* pleaded, but it muſt be under the great ſeal. *Vide Bro. Records* 65. *Co.* 1 *Inſt.* 128. 12 *Ed.* 4. 16. and the ſtatute of 27 *Eliz. cap.* 3. extends to common recoveries only. It muſt be given in evidence by the late act, in like manner as if it were to be pleaded, and that muſt be under the great ſeal; and ſo concluded *pro quer. Hard.* 118.

Young againſt *Pennington*, Eſq; *Paſ.* 1659. *in Sccio.* In an action of debt for 1000 *l.* the caſe was thus, *viz. William Wall* was bound to the king for 1000 *l.* the king aſſigned it to the plaintiff by letters patents ſhewn in court; and granted him power thereby to ſue for it in the king's name, rendring to the king at the receipt of his exchequer the eighth part of what ſhould be by him received, levied, compounded for or recovered. And moreover the king charged all ſheriffs and other officers into whoſe hands ſoever it ſhould come, upon the view of the ſaid letters patents, or of the inrolment

Seals of court but tranſcripts of records, whereas great ſeals are the records themſelves, and therefore not pleadable, but as a matter conſiſtent with the record; namely, non conceſſit per literas patentes.

inrolment thereof to make payment of the ſame, *&c.* afterwards this ſum of 1000*l.* was recovered by judgment of the court at the plaintiff's proſecution; and upon an inquiſition and extent to the ſheriffs of *London*, the ſum of 1000*l.* was levied by the defendant, and Sir *John Woolaſton* deceaſed, then ſheriff, and return thereof made accordingly into this court. And the defendant having notice of the letters patents, refuſed to pay it to the plaintiff; for which cauſe he brought his action, and the defendant pleaded to the letters patents *nul tiel record*, and the plaintiff demurred.

Hardres pro quer. The plea of *nul tiel record* is an ill plea in this caſe, 6 *Rep.* 156. In *Eden*'s caſe and in 16 *H.* 7. 116. a diverſity is taken betwixt the great ſeal and other ſeals of courts, for they are but tranſcripts of records, whereas the great ſeal is the record itſelf. *Vide* 4 *Rep. Hind*'s caſe *accord.* But a matter conſiſtent with the record may be pleaded, as *non conceſſit per literas patentes. Plow. Com.* 232. Seignior *Berkley*'s caſe, and 12 *H.* 7. 12. *accord.* And the reaſon given is, becauſe records cannot be tried but by themſelves, if a day be given to bring them in as in other caſes.

Object. Perchance the patent that was ſhewn the defendant had not a ſeal to it.

Reſp. That cannot now be alledged, becauſe it is not the ſame term in which it was ſhewn in court. *Vide* 5 *Rep. Wymark*'s caſe 74. *b.* And it is ſaid here *profert hic in cur.* But the defendant's time to have queſtioned the validity of the patent was at firſt, it cannot be drawn in queſtion now.

Allen and *Stephens pro defendente.* Admitting the plea to be naught, yet the plaintiff

ought not to demur to it. But the court ought to have been moved in it, and upon view of the letters patents to have determined the matmer. And by the demurrer he has confeſſed the plea. But to that the court anſwered that a demurrer was no confeſſion of any thing not ſufficiently pleaded. They urged farther that it was a good plea, becauſe there might perhaps be a vacat entred. *Vide* 5 *H.* 7. 24. *Dyer* 176, 177. *Keilw.* 96.

A demurrer no confeſſion of any thing not ſufficiently pleaded.

But at another day *Allen* took three exceptions to the declaration. 1. That an action of debt does not lie for the plaintiff in the caſe, becauſe there was no debt due to him, but the money was to be brought into court. 2. If the plaintiff could have an action of debt, yet he muſt not ſue for the whole 1000 *l.* becauſe an eighth part of it is due to the king. 3. Becauſe it is not averred that the patent or the inrolment of it was ſhewn to the ſheriff, as the patent directs. And it is not ſufficient to ſay, that he had notice of it; for that is not traverſable as it is here pleaded, being laid too generally; and becauſe it is not expreſſed by whom he had notice, ſo that a certain iſſue might be taken upon it. *Et adjornatur. Hard.* 158.

Wilſon verſ. ——— *Mich.* 15 *Car.* 2. *in Scio.* In debt upon the ſtatute of 32 *Hen.* 8. for the arrearages of an annuity, deviſed to the plaintiff's wife for life, who was dead before the action brought againſt the adminiſtrator of the terre-tenant and occupier of the land, out of which, *&c.* the defendant pleaded *nil detinet*, upon which the plaintiff demurred. And the queſtion was upon the demurrer, whether this were a good plea or not in this action? becauſe the action is grounded upon a will in writing,

Nil detinet a good plea to an action for an annuity by will, or upon a tally.

which (as was urged) is equivalent to a deed, and to a deed it were not a good plea: as in caſe of debt upon a bond, or otherwiſe upon ſpecialty. But where an action of debt is grounded upon matter in *pais* only, as upon preſcription, or upon a deed, that is not requiſite to maintain the action, as for rent, reſerved upon a leaſe by deed, there it is a good plea; and the books go upon this difference; *vide* 19 *Hen.* 8. 9. 22 *Ed.* 4. 51. 5 *Hen.* 7. 23. 9 *Ed.* 4. 53. 10 *Hen.* 7. 24. 21 *Hen.* 7. 14. But *per Hale* ch. baron the caſes are not alike. For a will is not a deed, though it be as effectual to paſs a thing, as a deed is; yet it is not a deed in its own nature; becauſe there needs no ſealing nor delivery to a will, which is eſſential to a deed. And therefore *nil detinet* is a good plea to an action of debt grounded upon a will, as well as to an action of debt upon a tally; and the action here is not ſo much grounded upon the will itſelf, as upon a ſtatute law, which enables men to diſpoſe of their lands, and of rents out of lands by their wills. In an action of debt upon a grant of a rent *nil detinet* is a good plea, becauſe the plaintiff has other remedy to levy it; *viz.* by diſtreſs; but it is not a good plea to an action grounded upon a grant of a bare annuity, becauſe the grantee in ſuch a caſe has no remedy by diſtreſs: and therefore in that caſe, the defendant muſt avoid it by matter of as high a nature, as by acquittance under ſeal or the like. But becauſe it appeared to the court, that the action was brought in *Middleſex*; and that the houſes out of which this annuity was deviſed, lay in *London*, which made the action local, by reaſon of the pernancy of the profits, the whole court inclined againſt the

Nil detinet a good plea upon a grant for rent, but not for a bare annuity.

the plaintiff. *Et adjornatur. Hard.* 332. See *Strange* 779.

Joy verſ. *Kent*, *Paſch.* 17 *Car.* 2. *in Sccio.* Debt upon an obligation, conditioned to pay ſo much money if ſuch a ſhip returned within ſix months from *Oſtend* in *Flanders* to *London*, which was more by the third part than the legal intereſt of the money; and if ſhe do not return, then the obligation to be void. The defendant pleaded, that there was a corrupt agreement betwixt himſelf and the plaintiff, and that at the time of the making of the obligation, it was agreed betwixt them, that he ſhould have no more for intereſt than the law permits, in caſe the ſhip ſhould ever return; and avers, that the obligation was entered into by covin, to evade the ſtatute of uſury, and the penalty thereof: upon this averment the plaintiff took iſſue, and the defendant demurred. And the cauſe of demurrer was, becauſe the plaintiff had not traverſed the moſt material part of the defendant's plea; *viz.* the corrupt agreement: and that the averment was but the reſult of that, and the conſtruction of the law upon it. And that ſuch plea is good, though a matter and agreement be averred, which is beſide the obligation and condition thereof, and which deſtroys it. *Vide Cro.* 2 *Rep.* 253. 5 *Co. Rep.* 69. *Burton*'s caſe.

Whether inſurances are within the ſtatute of uſury.

Hale chief baron. Clearly this bond is not within the ſtatute: for this is the common way of inſurance, and if this were void by the ſtatute of uſury, trade would be deſtroyed. And it is not like to the caſe, where the condition of a bond is to give ſo much money, if ſuch or ſuch a perſon be then alive; for there is a certainty of that at the time. But it is uncer-

tain and a caſualty whether ſuch a ſhip ſhall ever return or not. But he agreed, that the averment was well taken, becauſe it diſcloſes the manner of the agreement. and although the corrupt agreement might have well been traverſed; yet the averment is traverſable too, and the demurrer to the replication naught: and afterwards the demurrer was waived by conſent, and iſſue taken upon the averment. *Hard.* 418.

Bail bond given for treaſon void.

Norfolk's caſe, *Trin.* 19 *Car.* 2. *in Scc'io.* In debt upon an obligation conditioned to appear before the houſe of commons, the caſe was; They had voted one *Wogan* guilty of high treaſon, and the plaintiff being a ſerjeant at arms attending upon the houſe, was ordered to take the ſaid *Wogan* into cuſtody; who being taken into cuſtody by virtue of that warrant, the defendant entred into this bond to the plaintiff, conditioned for the ſaid *Wogan*'s appearance, who did not appear, and hereupon debt being brought, the chief queſtion upon a demurrer was, whether this were a void bond or no.

And *per Curiam*, It is void by the common law, for it was entred into for eaſe and favour of the priſoner; and it is no more than a bond to a ſheriff, to anſwer for an eſcape, and here *Wogan* was taken into cuſtody for treaſon, for which he could not be bailed: otherwiſe, if it were for an offence bailable. But the court agreed that the plaintiff was not an officer within the ſtatute of 23 *Hen.* 6. *cap.* 10. ſo that the ſaid ſtatute did not make void this bond. But then it was urged, that the condition, which recites the bond to have been entred into for appearance only, is an eſtoppel to the parties to ſay, that it was given for any other cauſe: to which

which the court ſaid, that here was no eſtoppel; for an eſtoppel in ſuch caſes, is always when a bond is a good bond, then indeed the recital is an eſtoppel: but when the bond is void, the eſtoppel is void too, and does not bind the parties; as if in caſe upon the ſtatute of 23 *Hen.* 6. *cap.* 10. or the ſtatute of uſury, the condition of the bond ſhould recite ſome matter that makes the bond good; yet if in truth the contract were uſurious, or the condition not within the ſtatute of 23 *Hen.* 6. *cap.* 10. and that be pleaded, it will avoid the bond, and the eſtoppel too: ſo here likewiſe, the plaintiff by his demurrer has admitted the matter of fact, which the defendant allegeth in his plea; to wit, that it was for treaſon; and judgment was given accordingly *niſi cauſa*, &c. *Hard.* 464.

An eſtoppel is only when the bond is a good one, when the bond is void the eſtoppel is void too.

In *Morgan* againſt *Skinner*, 9th of *June* 1722. In treſpaſs *in Sccio.* for taking *Duos Boves*, the defendant juſtifies for toll; upon demurrer this exception was taken to the defendant's plea, that he had not given notice how much the toll was: but to this it was anſwered by ſerjeant *Comyns*, *pro defend'*, and holden *per totam Curiam*, that laying a demand was ſufficient notice of itſelf, and the plea was holden to be good. *Bunb.* 114.

In treſpaſs defendant juſtifies for toll, and need not ſay how much the toll was on demurrer.

Birchall againſt *Smethurſt*, 12th *June* 1722. *in Sccio. Bumb.* 114. This was an action of covenant upon an indenture of leaſe, for cutting down five oaks, *&c.* The queſtion aroſe upon theſe words, "proviſo that if the leſſee "ſhall commit wilful waſte, then the leaſe ſhall "determine and ceaſe;" upon a demurrer the only queſtion was, whether theſe words proviſo, *&c.* ſhall be conſtrued to be words of condition or covenant; for if it ſhall be taken to be a

Proviſo not to commit waſte, and whether it is a covenant or a condition.

condition, then a breach of covenant is improperly aſſigned, and judgment ought to be for the defendant; of which opinion was *the whole court*; for though a proviſo may amount either to a condition or covenant, yet that muſt be when the intent of the parties leads to ſuch conſtruſtion reſpectively; but there is no ſuch intention, nor any neceſſity here to conſtrue it a covenant, for there were other proviſions in the leaſe by way of covenant for the benefit of the leſſor. Mr. *Bootle* (who demurred) for the defendant, Mr. *Fazakerly* for the plaintiff. *Yelv.* 206. 2 *Cro.* 281. 1 *Rol. Abr.* 518. *cap.* 2, 5, 6. *Dyer* 150. 1 *Leon.* 277. 2 *Lev.* 116. *Tomley's* caſe. 40 *Edw.* 3. *fo.* 5 *b.* 1 *Lev.* 274. *Pordage* againſt *Cole*, *Raym.* S. C. *Saund.* S. C. 1 *Lev.* 155.

Treſpaſs quare clauſum fregit by the huſband and wife of her inheritance lies.

In *Willy* againſt *Thompſon*, *November* 22, 1729. Treſpaſs, *quare clauſum fregit* of the huſband and wife, and for treading down, and conſuming and depaſturing the graſs of their cloſe:— Adjudged on demurrer, that the action was well brought by the huſband and wife, the cloſe being her inheritance, and there being no ſeverance of the graſs; if it had been corn cut down, that would have been a ſeparate intereſt veſted in the huſband alone. *vide Cro. Eliz.* 136, 96. 2 *Vent.* 195. 1 *Bulſt.* 110. 15 *Edw.* 4. 9. *Cro. Car.* 437, 8. *Bunb.* 277.

A lord of parliament attached to anſwer; judgment for plaintiff on a demurrer upon evidence.

Sir *Thomas Weſt* lord *Delawar* was attached to anſwer *Thomas* earl of *Surry*, treaſurer of the exchequer in a plea of debt, whereupon a demurrer on evidence; judgment was obtained for the plaintiff. *Mich.* 17 *Hen.* 7.

Eaſter

Eaſter 5 *W. & M.* 22 *May*, "It is ordered, "That a *concilium* be made in no cauſe until "the record be filed, unleſs where the plead- "ings are of the ſame term."

No concilium till the record be filed, unleſs when the pleadings are in the ſame term.

Mich. 11 *Geo.* 1. 7th of *November*, It is ordered, "That in all caſes in which, by rule of "court, counſel are to be heard, the paper "books ſhall be delivered to the barons four "days before the hearing, and that a note of "the ſame cauſes ſhall be delivered to the ba- "rons the day before the hearing".

Paper books to be delivered to the barons 4 days before the hearing, and a note of the cauſes one day.

Of rules to reply, &c.

The rules to reply, *&c.* are given in the book of orders in like manner as the rules to plead, and are all out in four days excluſive of the day on which each rule is given.

Rules to reply out in 4 days.

By giving rules to reply, *&c.* either party may bring the cauſe forwards to judgment either by verdict, inquiſition or default, and to prevent ſurprizes the modern practice is to give notice thereof in writing, and it is now become irregular not to do it.

And by giving ſuch rules, either party may ſpeed the cauſe.

Sunday is to be accounted a day within all the rules except in arreſt of judgment, or where it happens to be the laſt of the four days, and in ſuch laſt caſe the party will have all *Monday*.

Sunday reckoned a day except it be the laſt.

Proſſer againſt *Winſton*, *June* the 1ſt 1722. *in Sccio. Bunb.* 113. The queſtion was whether *Sunday* ſhall be taken to be one of the days a defendant has to plead in.—*Nota*, *Sunday* is included in the eight days for notice of trial, but the diſtinction is between matters in *pais*, and

Whether Sunday is one of the days a defendant has to plead in. 2 Leon. 206. in matters tranſacted in court it is one, but in matters in pais it is not.

and matters tranſacted in court, and therefore in this caſe the plea was received.—*Nota*, This was an action of treſpaſs, and the defendant pleaded the *locus in quo*, *&c.* was antient demeſne.

Of dormant cauſes.

If no proceeding four terms excluſive a term's notice muſt be given before the eſſoign day of the 5th,

a ſummons to be deemed no proceeding,

but a notice of trial ſhall be deemed ſuch.

In *Trin.* 1753. It was ordered, "That in all "cauſes in which there have been no proceeding "for four terms, excluſive of the term in which "the laſt proceeding was had, the party who de-"ſires to proceed again ſhall give a term's notice "to the other of his intended proceeding, and "ſuch notice ſhall be given before the eſſoign "of the 5th or other ſubſequent term, and that "a baron's ſummons if no order be made there-"upon ſhall not be deemed a proceeding, but "a notice of trial though afterwards counter-"manded ſhall be deemed a proceeding with-"in the meaning of this rule."

Of ejectments.

Ejectment how founded.

According to the modern practice there is regularly no neceſſity of ſealing and delivering leaſes on the lands, except in caſes of vacant poſſeſſions, but the party who claims a title feigns a leaſe, and in the name of the feigned leſſee delivers a declaration to the tenant in poſſeſſion, in the name of the caſual ejector, who is alſo now ſome feigned perſon; on this declaration, there is notice to the tenant in poſſeſſion in the caſual ejector's name, a copy of which declaration and notice is inſerted in the appendix.

If the premiſſes are vacated a leaſe muſt be ſealed on the premiſſes previous to bringing the ejectment agreeable to the ſtatute hereafter mentioned.

A leaſe neceſſary where premiſſes are vacant.

It hath been holden that the ſervice of the declaration ought to have been on the tenant himſelf or his wife on the premiſſes, and that ſervice on any of his children or ſervants was not good, but now by the 4 *Geo.* 2. *cap.* 28. It is enacted, " That in all caſes between " landlord and tenant, as often as it ſhall hap- " pen that one half-year's rent ſhall be in ar- " rear, and the landlord or leſſor, to whom " the ſame is due, hath right by law to re- " enter for the non-payment thereof, ſuch " landlord or leſſor ſhall and may, without " any formal demand or re-entry, ſerve a de- " claration in ejectment for the recovery of the " demiſed premiſſes, or in caſe the ſame can- " not be legally ſerved, or no tenant be in " actual poſſeſſion of the premiſſes, then to " affix the ſame upon the door of any demiſed " meſſuage, or in caſe ſuch ejectment ſhall not " be for the recovery of any meſſuage, then " upon ſome notorious place of the lands, te- " nements, or hereditaments, compriſed in " ſuch declaration in ejectment, and ſuch " affixing ſhall be deemed legal ſervice there- " of, which ſervice or affixing ſuch declaration " in ejectment, ſhall ſtand in the place and " ſtead of a demand and re-entry, and may " recover judgment, ſo as not to bar the right " of any mortgagee as in the act is ſet forth."

What ſervice neceſſary.

If half-year's rent in arrear, and the landlord hath right to re-enter,

he may without demand, if the declaration cannot be ſerved, affix it on the premiſſes, which ſhall be good ſervice.

The ſolicitor having drawn the declaration againſt the caſual ejector, he makes as many copies on treble penny ſtamps as there are tenants

on

on the premiſſes, for which the ejectment is brought, and ſerves each of them in manner hereafter mentioned.

After the copies of the declaration are ſerved, the perſon employed to ſerve them, (except as is above excepted by the ſtatute), muſt make oath to the following purport, namely that he delivered to *J. D.* tenant in poſſeſſion of the premiſſes in queſtion, a true copy of the annexed declaration with the indorſed notice or ſubſcription thereon written, which ſaid indorſement or ſubſcription, the deponent did then read to the ſaid *J. D.* and acquainted him with the contents thereof.

What oath of ſervice.

This affidavit is to be poſitive that *J. D.* was tenant in poſſeſſion, or that the defendant acknowledged himſelf to be ſo, becauſe no man ſhould be turned out of poſſeſſion without a poſitive affidavit, on which he might charge the defendant with perjury.

On whom to be ſerved.

The ſervice may be on the tenant, or on his wife upon the premiſſes in queſtion, but not on his ſon, daughter or ſervant, unleſs the receipt of it is acknowledged by the tenant, and ſo mentioned to be in the affidavit of ſervice.

Motion for judgment,

if defendant enters into the common rule, and will not afterwards confeſs leaſe, &c. an attachment will be granted.

Upon the affidavit of ſervice, and declaration annexed, the plaintiff moves for judgment againſt the caſual ejector, which is always granted conditionally, *viz.* unleſs the defendant in due time appears and enters into the common rule of confeſſing leaſe, entry and ouſter: this rule being made by aſſent of parties, an attachment lies for non-performance of it, as for all other rules of court that are diſobeyed; and this is all the remedy which the parties on both ſides have for their coſts. 1 *Salk.* 259.

By

By the old rules, it is ordered, "That no "judgment in any action of ejectment ſhall be "entred by default or confeſſion without ſpeci- "al order of the court." No judgment in ejectment by default or confeſſion but by leave of the court.

In caſe of the court's being moved for the landlord to have leave to appear, and defend, and if there be ſeveral perſons that claim title, the rule may be drawn generally or particularly;—Generally that *J. H.* who claims title to the premiſſes in queſtion in his poſſeſſion ſhould be admitted defendant for ſuch meſſuages; and this puts a neceſſity on the plaintiff at the aſſizes to diſtinguiſh by proof, what tenements are in each defendant's poſſeſſion, becauſe by the rule he is to confeſs leaſe, entry, and ouſter, only for the lands in his poſſeſſion; and if the plaintiff cannot diſtinguiſh by proof, what tenements are in each defendant's poſſeſſion, he can have no verdict againſt him, and conſequently no judgment. In caſe landlord appears, how to draw the defendants rule where more than one claim generally.

Or the rule may be drawn ſpecially, that *J. H.* who claims title to ſuch lands (expreſſing them particularly) ſhould be admitted defendant, which will ſuperſede the neceſſity of proof, that the lands are in his poſſeſſion; —If the defendant's attorney will not give a note of the particulars of the land for which he was admitted defendant, the plaintiff may ſummon him before a baron who will order the rule to be drawn up ſpecially as the caſe requires, if the party in poſſeſſion will admit himſelf to be defendant. Specially.

The declaration againſt the caſual ejector ought to be of the term in which it was ſerved, or preceding the time of ſervice, and to be delivered before the eſſoign day of the iſſuable When to deliver declaration,

term,

if ſerved before the eſſoign day of an iſſuable term, when the defendant is to appear and plead,

term, when the cauſe is deſigned to be tried, and if delivered before the eſſoign day of either of the two iſſuable terms, the party will be bound to appear, and plead without further notice; if in *London* or *Middleſex* within a week after the court has been moved, if elſewhere within four days after the end of the term; but if the declaration be delivered before the eſſoign day of *Michaelmas* or *Eaſter* term, which are no iſſuable terms, if in *London* or *Middleſex* within a week as aboveſaid; but if elſewhere, the party is not bound to appear and plead without motion made, and a rule obtained in ſuch *Michaelmas* or *Eaſter* terms reſpectively, nor will his time for appearing and pleading expire till the day after the end of the next iſſuable term; the following rule will direct as to part of what is ſaid above.

and when if ſerved before the eſſoign of Michaelmas and Eaſter terms.

If no appearance in country cauſe within 4 days after the end of the iſſuable term, judgment againſt caſual ejector.

Trin. 1753. Concerning ejectments, it is ordered, "That where judgment in ejectment "ſhall be moved for in an iſſuable term, "and the premiſſes in queſtion do not lie in "*London* or *Middleſex*, the plaintiff ſhall be at "liberty to ſign judgment, unleſs an appear-"ance be entred to ſuch ejectment within "four days after the laſt day of ſuch term."

Appearance entred according to the defence and the parcels.

The appearance is entred by the defendant's clerk in court, according to the nature of the defence and the parcels to defend.

The practice to annex the rule to confeſs, &c to the record.

The practice of the office has always been, and ſtill continues to be, to annex the rule to confeſs leaſe, entry and ouſter to the record in which caſe alone the practice of the office differs from the preſent practice of the other courts in matters of ejectment.

Powell

Powell leſſee of *Powell* againſt *Badright*, in *Trin.* 1743. Ordered judgment be entred for plaintiff, unleſs, *&c.* appear within one week after the end of the term, and further ordered that leaving a copy of the declaration in this cauſe together with a copy of this rule in the dwelling-houſeof, *&c.* (the tenant) or if admittance may not be, by affixing the ſame on the door of the ſaid houſe be deemed good ſervice on her.

Order to fix the declaration on the door in caſe admittance be refuſed.

Right leſſee of *Cuzach* againſt *Wrong*. In *Trin.* 1756. Ordered that the leſſor of the plaintiff do give ſecurity for coſts, and till ſuch ecurity is given all proceedings to ſtay.

Order that leſſor of plaintiff give ſecurity for coſts.

If on the trial the defendant will not appear, and confeſs leaſe, entry and ouſter, the courſe is to call the defendant, and his attorney, if he be within the rule, and then to call the plaintiff himſelf, and nonſuit him, and then upon the return of the *poſtea*, judgment by leave of the court will be given againſt the caſual ejector.

If defendant will not at the trial confeſs leaſe, &c. judgment will be againſt the caſual ejector by nonſuit.

But the judgment againſt the caſual ejector cannot be entred till the *poſtea* be returned, on which is indorſed that the nonſuit was for want of confeſſing leaſe, entry and ouſter; for it does not appear that the defendant has not complied with the rule till after the aſſizes, at which the cauſe was to have been tried, and therefore the judgment cannot be entred till the next term after ſuch aſſizes.

But not before the poſtea is returned.

The judgment being againſt the caſual ejector the defendant cannot bring a writ of error, for he was no party thereto, and if he brings ſuch writ in the name of the caſual ejector, the caſual ejector being a friend to the plaintiff's leſſor, may either releaſe the errors, or upon a motion for a *nonpros*, the court will order it to be entred. — But

Defendant can bring no writ of error where the judgment is againſt the caſual ejector,

if

unleſs he be an infant.

if an infant be tenant in poſſeſſion, and the plaintiff obtains judgment againſt the caſual ejector, for want of confeſſion of leaſe, entry and ouſter, and the infant brings a writ of error in the caſual ejector's name; and the defendant in error ſets up a releaſe from the caſual ejector; upon making this out to be the caſe of the infant, on motion on the writ of error, the court will not ſuffer ſuch a releaſe to be pleaded in bar to ſuch writ of error, becauſe no laches can be imputed to the infant for want of confeſſion of leaſe, entry and ouſter. *Bacon*, title *Ejectment*, B.

The plaintiff being nominal only his death ſhall not abate the action.

If the plaintiff in ejectment, who is but a nominal perſon dies, yet the action ſhall not abate, becauſe if there be any other perſon of the ſame name, the court will intend him to be the perſon mentioned in the declaration, becauſe he is only nominal, and therefore while there is any perſon of the name living, the leſſor of the plaintiff, who is only concerned in the intereſt, may proceed in the ſuit. 3 *Keb.* 771.

If only a truſtee and releaſes, may be committed.

Alſo if the plaintiff, who is only a truſtee for the leſſor, releaſes the action, he may be committed for the contempt 1 *Salk.* 260.

No original wanting.

There wants no original, nor proceſs in the office of pleas to warrant the bill in caſe of a writ of error.

None permitted to defend, but a tenant or one materially intereſted.

No perſon is admitted to defend in ejectment, unleſs he be tenant, and is or hath been in poſſeſſion, or receives the rent, becauſe it is an act of *Champerty* for him to interpoſe, in order to cover the poſſeſſion with his title; and if the party added another defendant who was not concerned in the poſſeſſion of the tenements,

it

it was a miſchief at common law, becauſe recovering againſt one of the defendants, there was conſequently no remedy for the ſtranger's coſts; but by the ſtatute of 8 & 9 *W.* 3. *cap.* 10. Coſts are given to ſuch ſtranger who is made defendant, unleſs the judge certifies immediately on the trial, that the plaintiff had a probable cauſe for making ſuch ſtranger defendant.

Landlord ought to be made defendant, and privilege of parliament ſhall not deprive him.

To make the landlord a defendant, in ejectment is of right, for otherwiſe he might be prejudiced in his inheritance by combination between the plaintiff and tenant in poſſeſſion. 1 *Salk.* 257. So the landlord, tho' a member of parliament, muſt be joined if he applies for it, for every perſon who has any privilege has it by law, which the courts cannotc ompel him to waive. 1 *Salk.* 256.

But he may refuſe.

But a landlord may refuſe to be made defendant. 1 *Salk.* 256.

Leſſor's wife refuſed to be a defendant, and why.

Where it was moved that the wife of the leſſor of the plaintiff might be defendant, the plaintiff's title being by a pretended marriage which was controverted, the court inclined to grant it, but preceiving it to be a trick to gain time, and ſo to put off the trial it was refuſed. 1 *Salk.* 257. That perſon who is only a truſtee need not be joined. *Comb.* 332.

Where one defendant refuſes to confeſs the other not.

In ejectment where there are two defendants for the ſame premiſſes, and one appears, and confeſſes leaſe, entry and ouſter, and the other does not, the plaintiff cannot proceed againſt the other, but he muſt be nonſuited, becauſe both the defendants not admitting the demiſe, and the plaintiff not proving an actual entry and demiſe, he cannot maintain his declaration; but if there appeared any covenant between

ſuch perſon not appearing and the leſſor of the plaintiff, the court will ſtop the judgment againſt the caſual ejector, for the part of him who appeared, and oblige him who did not, to releaſe the coſts, becauſe a declaration was delivered to each of them for their reſpective parts; and therefore where one does not pay obedience to the rule, the plaintiff has judgment againſt the ejector for his part only. 1 *Vent.* 255. 2 *Ventris* 195.

Where defendants are ſeverally intereſted the declarations muſt be ſeveral,

And where there are ſeveral defendants to whom the plaintiff delivers declarations that are ſeverally concerned in intereſt, and the plaintiff moves to join them all in one declaration, yet the court will not do it, but the plaintiff muſt deliver ſeveral declarations to each of them, becauſe each defendant muſt have a remedy for his coſts, which he could not have, if they were joined in one declaration, and the plaintiff prevailed only againſt one of them; and by this means the plaintiff might have a tenant of his own made defendant with the others in order to ſave the coſts. 2 *Keb.* 524.

or plaintiff by making a defendant of his own tenant may ſave coſts.

The court may award coſts, and if payment be refuſed will order attachment for them.

The parties by entring into the common rule are under the power of the court, by virtue whereof the court awards coſts which being taxed by the maſter if demanded of the party, and he refuſes to pay them, the court on affidavit thereof will grant an attachment. 1 *Salk.* 259.

If carried on in the name of a poor perſon, the court will order the perſon carrying it on to pay.

If a ſtranger carries on a ſuit in another's name who has a title, and yet is ſo poor that he cannot pay coſts; in caſe he fails, upon affidavits of this matter, the court will order ſuch perſon, who carries on the ſuit to pay coſts to the defendant. 1 *Keb.* 827.

If an infant delivers a declaration to the defendant, ſome friend or guardian muſt be ſet up as plaintiff to anſwer the defendant's coſts; or ſecurity muſt be given for them.

Next friend or guardian muſt pay for the infant.

If there be baron and feme leſſors in ejectment, and one dies after entring into the rule, the ſurviving perſon is liable to pay coſts.

If baron and feme the ſurvivor muſt pay.

If ejectment be brought to be tried at bar to bring a matter in queſtion, as the validity of a will, and a parcel of land is inſerted in the declaration, which is not concerned in the queſtion, but to which the plaintiff hath undoubted right, and the defendant confeſſes leaſe, entry and ouſter for the whole, not obſerving this part, the plaintiff ſhall not on this account be excuſed from the coſts, but the court will give the defendant leave to retract his confeſſion as to this parcel; and ſo it was done in a caſe where a parcel of copyhold land being inſerted in the declaration, which was not touched by the will, no ſurrender being made to the uſe of the will. *Mich.* 27 *Car.* 2. in *B. R.* between *Oddye* and *Preſton.*

Defendant may retract his confeſſion on terms where he is ſurprized.

Where the houſes or things for which the ejectment is brought are empty, in ſuch caſe no declaration can be delivered, nor affidavit made thereof, by reaſon of which the court cannot proceed to give judgment againſt the caſual ejector; and therefore it is neceſſary to proceed the old way by ſealing a leaſe on the land, and giving rules to plead, and when theſe rules for pleading are out, affidavit muſt be made of the whole matter; upon which the court grants judgment, but there can be no judgment againſt the caſual ejector without moving the court for that purpoſe, tho' the rules for pleading are out, becauſe the court

Where houſes, &c. are empty leaſe muſt be ſealed on premiſſes.

will not grant any judgment againſt the caſual ejector, who is only nominal, without ſuch proper affidavit, leſt otherwiſe a third perſon ſhould be tricked out of his poſſeſſion.

And declaration affixed to the door, &c.

But by 4 *Geo.* 2. as has been ſaid before, in caſe there be no perſon reſiding in the houſe, or in caſe the declaration cannot legally be ſerved, it is ſufficient to affix it to the door of the houſe, or on ſome notorious place on the lands, in caſe the ejectment be for lands. 1 *Salk.* 255. But it is ſtill neceſſary to ſeal a leaſe on the premiſſes.

Where fraud appears in tenant to prevent ſervice, the court will order judgment.

So if the tenant in poſſeſſion kept his door ſhut, it was thought the beſt way to ſeal a leaſe on the land and proceed in the old way; but in this caſe it ſeems, that if the practice and fraud of the tenant be made appear to the court by affidavit, the court will grant judgment againſt the caſual ejector *niſi*.

A corporation leſſor muſt give a letter of attorney to ſeal a leaſe on the premiſſes.

It has been held, that where a corporation is leſſor of the plaintiff, they muſt give a letter of attorney to ſome perſon to enter and ſeal a leaſe upon the land, for a corporation cannot make an attorney or bailiff but by deed, nor can they appear but by making a proper perſon their attorney by deed; therefore they cannot enter and demiſe upon the land in perſon as natural perſons can; nor can they ſubſtitute an attorney to enter into a rule for their coſts; nor will an attachment go againſt them for diſobedience to that rule, and by conſequence they are put to make an actual leaſe upon the land, which leaſe muſt try their title, and then the attorney may proceed in the common method that is not altered by the ſaid ſtatute.

But

But in *Carth.* 390. *Patrick* againſt *Balls* in ejectment, where the plaintiff declared upon a demiſe made to him by the aldermen and burgeſſes, without ſetting forth that it was by deed, or under the ſeal of the corporation; and on a writ of error it was held well enough; and that this being a fictitious action to try the title, the demiſe need not now be ſet out to have been by deed.

But hath been determined not neceſſary to ſeal the leaſe.

Another inſtance, where the old method is to be obſerved is, where the ſeveral intereſts of the leſſors of the plaintiff be not known, and there it is a good way to ſeal a leaſe upon the premiſſes, leſt they ſhould fail in ſetting out in their declarations the ſeveral intereſts which each man paſſes; and in that caſe it is the beſt way to proceed in the old manner even now. *Bac. Abr.* tit. *Ejectment*, letter C.

Leſſor's intereſt not being known, ſafeſt to ſeal a leaſe on the premiſſes.

If a *habeas corpus* be brought to remove a cauſe in ejectment out of an inferiour court, and the lands lie within their juriſdiction, and the leſſor of the plaintiff ſeals a leaſe on the premiſſes, the courts above will grant a *procedendo*, becauſe the title of the land is a local matter, properly within the juriſdiction of the court below, where if they proceed regularly they ſhall not be prohibited; but if the leſſor has not ſealed a leaſe on the premiſſes they will not. 2 *Keb.* 119.

If ejectment in an inferiour court, by leaſe actually ſealed, cannot be removed by habeas corpus.

But if the lands do lie partly within the cinque ports and partly without, the defendant cannot plead above the juriſdiction of the cinque ports; for though the land be local matter, yet the demiſe is tranſitory and triable any where; therefore though the plaintiff may lay his action, for that which lies within an inferiour juriſdiction in the court below, if he takes proper

But part within and part without their juriſdiction; otherwiſe.

meaſures for that purpoſe; yet if he will lay it above, ſince the demiſe is tranſitory, the defendant cannot ſtop his proceedings; becauſe the courts above for ſuch tranſitory matters have a proper juriſdiction. 2 *Keb.* 69.

If removed, and the judge of the inferiour court grants an attachment for the removal, the ſuperiour court will grant an attachment againſt the judge of the inferiour court.

If the defendant in an inferiour court comes into a rule to confeſs leaſe, *&c.* and the cauſe be removed by *habeas corpus*, and the judge of the inferiour court grants an attachment againſt the defendant for diſobedience to the rule, the ſuperiour court will grant an attachment againſt ſuch judge for compelling obedience to their rules, and thereby obſtructing the buſineſs of the ſuperiour courts, ſince the defendant is not bound by the rule he entred into in the inferiour court, ſuch rule being only the practice of the ſuperiour courts. *Moor* 86. 1 *Keb.* 785.

The thing demanded in ejectment muſt be ſo particularly ſpecified, that the ſheriff may know what to give the poſſeſſion of.

In this action the law requires, that the thing demanded be ſo particularly ſpecified that the ſheriff may certainly know what to give the poſſeſſion of, if the plaintiff ſhould recover; for the judgment is in order to execution, and the judgment would be vain, if execution could not be had of the thing ſpecifically demanded; but in this action the judges did not confine themſelves to thoſe rules which govern the *præcipe*, but allowed ſomething to be recovered in this action, which could not be demanded in a *præcipe*, becauſe ſince the eſtabliſhment of that real action many things have been added and improved by art, and acquired new appellations that are perfectly underſtood now by the law, which are not found in the antient law books; and as men begun to contract by new names, which were not known in the old law, ſo it was reaſonable to ſuffer the remedy to follow

low the nature of ſuch contracts. *Bac.* tit. *Ejectment*, D. *ſect.* 2.

Hence it is ſaid in *Palm.* 337. by *Noy*, *arguendo* that an ejectment will lie of a hop yard.

Ejectment will lie of a hop yard;

But by *Dyer* 84. *pl.* 85. the judges did not extend this action as far as they went in an aſſize, becauſe the recognitors having the view of the thing demanded in the aſſiſe, muſt have more certain knowledge of the thing demanded than could be given in ejectment. And therefore it hath been held that an ejectment will not lie *de crofto*, though an aſſize will. *Style* 30. But if an ejectment be brought for a croft and an acre of meadow, and the plaintiff hath a verdict, he may have a ſpecial judgment for his acre of meadow, releaſing the damages for the reſt. 1 *Lev.* 58. An ejectment will lie *de uno crofto vocat'* *B.* 1 *Lev.* 58. *per Twiſden.*

will not lie of a croft, but if it be of a croft, and one acre of meadow, the plaintiff may have judgment for the acre, and releaſe his damages for the reſt.

An ejectment does not lie *de quodam rivulo &c. aquæ curſu* called *locar in L.* for *rivulus ſive aquæ curſus* lies not in demand; for *non moratur*, but is always flowing, nor can execution by *habere facias ſeiſinam* be made thereof; and therefore the action ought to have been of ſo many acres of land *aqua cooperi'*. But if the land under the river does not belong to the plaintiff, but the river only, then upon a diſturbance the remedy is by action upon the caſe only.

Will not lie of a river or water courſe,

but of land covered with water.

For this reaſon an ejectment does not lie *de piſcaria* in ſuch a river more than of a common apprender, or rent adjudged, upon a writ of error upon a judgment out of *Ireland*, and the judgment for this reaſon reverſed. *Cro. Car.* 492. But *Jones* ſaid perhaps an aſſize would lie

It does not lie of a fiſhery.

for it, becauſe it is *proficuum in certo loco capiend'*; *& vid. Cro. Jac.* 146. But an ejectment lies *pro ſtagno*, becauſe in law *ſtagnum* comprehends both land and water. *Yelv.* 143. *Co. Lit.* 5. *Regiſt.* 227. So *de gurgite* is good for the ſame reaſon. *Co. Lit.* 5.

Ejectment lies pro communia paſturæ generally, if joined with other lands, but not pour cauſa de vicinage.

Newman againſt *Holdingfaſt*, *Mich.* 3 *Geo. rot.* 194. Ejectment for lands *ac etiam pro communia paſturæ*. And after verdict for the plaintiff, it was moved in arreſt of judgment, that it ought to have been mentioned, what ſort of common; becauſe an ejectment will not lie for all ſorts, ſuch as common *pour cauſa de vicinage*. And that a commoner cannot maintain treſpaſs, and much leſs an ejectment, and *Co. Lit.* 4. *b. Bro. Common* 24. *Treſpaſs* 213. *Yelv.* 143. *Cro. Car.* 492. 1 *Lev.* 212. were cited.

Sed per curiam: After a verdict it ſhall be intended to be ſuch common for which an ejectment will lie, as common appendant, or appurtenant. And the general expreſſion of common muſt relate to that which is moſt uſual, juſt as the word tenure imports a tenure in ſocage. Fines and recoveries are *de communia paſturæ* generally. 1 *Cro.* 301. 3 *Keb.* 738. 1 *Jon.* 315. *Mich.* 1 *Geo. Cave* againſt *Hunt*, in the exchequer chamber, this objection was over-ruled. He that has the poſſeſſion of the land has the poſſeſſion of the common, and the ſheriff by giving poſſeſſion of one, executes his writ as to the other. *N. B.* This was not a motion in arreſt of judgment, but came from *C. B.* by writ of error to *B. R.* where the judgment was affirmed. *Str.* 54.

Will not lie for a rent or common appendant, without the land.

But ejectment does not lie for a rent or common appendant, (without the land by which it is claimed), or other things that lie merely in grant,

grant, becauſe theſe being incorporeal things are in their nature inviſible, *quæ neque tangi nec videri poſſunt*, and therefore not in their nature capable of being delivered in execution. *Cro. Car.* 202. *Cro. Jac.* 146. *Co. Lit.* 9. *a.*

In *Bennington* againſt *Goodtitle*, 11 *Geo.* 2. On error in ejectment, it was held to lie for a beaſt gate, which is a term known in *Suffolk*, and imports land and common for one beaſt. And the judgment was affirmed. *Str.* 1084. Will lie for a beaſt gate.

An ejectment lies of an orchard, becauſe it is a word of a certain ſignification, though in a *præcipe* it muſt be demanded by the name of a garden; and it being well enough underſtood, the ſheriff may with certainty deliver it upon an execution. *Noy* 37. *Wright* and *Wheatly* adjudged. *Cro. Eliz.* 854. Will lie of an orchard.

So an ejectment lies of a ſtable, becauſe it is a word of a determinate ſignification, and may be delivered by the writ of execution. 1 *Lev.* 58. And ſo an ejectment lies of a cottage, though a recovery doth not. And of a ſtable, and of a cottage.

An ejectment of an houſe is good, though in a *præcipe* it ought to be demanded by the name of a meſſuage; becauſe the ejectment is an action of treſpaſs in its nature; as a treſpaſs, *wherefore* he broke into the houſe has been allowed; ſo they allowed it good in ejectment, and the import and certain ſignification of the word *domus* or houſe being well enough underſtood in the law; for in waſte the thing itſelf is recovered, beſides damages, and yet the action of waſte is given *de domibus*. *Cro. Jac.* 654. *Royſton* and *Eccleſton* adjudged. *Palm.* 337. 3 *Lev.* 97. *Hard.* 76. And of a houſe.

Sullivane againſt *Seagrave*, *Eaſter* 12 *Geo.* Error of a judgment in ejectment in *B. R.* in *Ireland*, *de parte domus cognit' per nomen de le* 3 *Kings* Of a part of a houſe.

in A. and it was objected, that an ejectment would not lie *de parte domus*, and that the ſheriff could not know of what part he was to deliver poſſeſſion, and 2 *Rol. Rep.* 483. 11 *Co. Savil's* caſe. 4 *Mod.* 166. *Mo.* 702. *Lutw.* 974. *March* 97. *Salk.* 254. were cited. But the court was of opinion it was well enough, the ſituation of the houſe being ſufficiently deſcribed, and the ſame certainty is never required in an ejectment as in a *præcipe*. *Str.* 695.

Of a chamber in the ſecond ſtory.

So an ejectment of a chamber in the ſecond ſtory of ſuch a houſe was held good, there being certainty enough to direct the ſheriff in the execution. 3 *Leon.* 210. *Noy* 109. *Hard.* 57. *S. P.*

Not of a kitchen.

But an ejectment *de coquina*, *Anglice* a *Kitchen*, is naught; for though the word is well enough underſtood, yet becauſe any chamber in the houſe is applicable to that uſe; the ſheriff hath not certainty enough to direct him in the execution, in regard the kitchen may be changed between the judgment and execution. *Noy* 109. *Ford* and *Lerk* adjudged.

Not for a tenement.

Goodtitle againſt *Walton*, *Eaſter* 2 *Geo.* 2. After verdict *pro quer.* in ejectment, the judgment was arreſted, becauſe it was for a meſſuage, a garden, and a tenement, and entire damages; whereas an ejectment *de uno tenemento* will not lie. *Str.* 834.

Nor for a meſſuage or tenement.

An ejectment *de uno meſſuagio ſive tenemento* is naught, for the uncertainty of the word *tenement*, being of a more extenſive ſignification than the word *meſſuage*, and conſequently uncertain what is demanded by the ejectment. *Cro. Eliz.* 186. *Wood* and *Pain* adjudged. 3 *Leon.* 228. *S. C. Popl.* 197, 203. *Noy* 86.

Cro.

Cro. Jac. 125. *Style* 364. *S. P.* 1 *Sid.* 295. *S. P.* adjudged.

But an ejectment for a meſſuage or tenement called the *Black Swan* is good, becauſe the addition reduceth it to a certainty of a dwelling houſe. 1 *Sid.* 295. 3 *Mod.* 238. 4 *Mod.* 136.

But will lie for a meſſuage or tenement called the Black Swan.

Danvers contra Wellington, Mich. 12 *Car.* 2. *in Scio.* In *ejectione firmæ pro uno meſuagio ſive burgagio in Hay infra muros*; it was moved in arreſt of judgment, after verdict, for the incertainty of the declaration; but the court held it to be good, and that an ejectment lies well *de burgagio*; and that *meſſuagium* and *burgagium* ſignifie the ſame thing in a borough. *Hard.* 173. *Popham* 203.

A meſſuage or burgage, good.

An ejectment does not lie *de pannagio*, becauſe this is only the maſts, that fall from the trees which the ſwine feed upon, and not part of the ſoil itſelf, as the herbage is, and is no more than the fruit which falls from the trees, which the ſwine have a right to feed on. 1 *Lev.* 212. *Pemble* and *Stern* adjudged. 1 *Sid.* 416. *S. C.* adjudged.

It does not lie de pannagio.

But an ejectment lies of a boilery of ſalt, that is, where a man hath no inheritance in the ſoil in which there is a well of ſalt water, but only a leaſe or grant of ſo many buckets of the water as will ariſe (which are called the boileries), and theſe are withheld from him, he may bring his ejectment for ſo many boileries as his grant was. *Cro. Jac.* 150. ſaid to have been adjudged. 1 *Sid.* 161. 1 *Lev.* 114. *S. P.* admitted.

But it lies for a boilery of ſalt.

So an ejectment lies for a coal mine, becauſe it is not to be conſidered as a bare profit *apprender*, but a coal mine comprehends the ground

And for a coal mine.

ground or ſoil itſelf, which may be delivered on the execution, and though a man may have a right to the mine without any title to the ſoil, yet the mine itſelf being fixed in a certain place, the ſheriff has a thing certain before him to deliver execution. *Cro. Jac.* 150. *Comyn* and *Kincto* adjudged. *Noy* 121. *S. C.*

And pro prima tonſura.

An ejectment lies *pro prima tonſura*, that is if a man hath the grant of the firſt graſs that grows on the land every year, he may recover it in ejectment of him that withholds it from him; for the firſt graſs, or *prima tonſura*, is the beſt profit and grant of the property; and therefore he that hath it ſhall be eſteemed the proprietor of the land itſelf till the contrary be proved; for the after graſs or feeding is in the nature of commonage; as therefore he, that hath the firſt graſs or *tonſura*, has the moſt ſignal profits of the land, and may keep it longer or ſhorter on the land, according to the ſeaſonableneſs of the year: it is but reaſonable to give him this remedy againſt the perſon that ouſts him of it, eſpecially when it is a fixed determinate thing, which the ſheriff may put him in poſſeſſion of; which diſtinguiſhes it from a right of common or other profit *apprender*; for the commoner cannot aſſign any one acre which he hath a right to ſeparate from the reſt of the commoners, whereas the grantee of the firſt graſs has in reality a right to the land itſelf till the crop be taken off; for no man can enter on the land till that be off, without being a treſpaſſer. *Cro. Car.* 262. *Ward* and *Pelifer*.

Lies pro herbagio.

So an ejectment lies *pro herbagio*, becauſe the herbage is the moſt ſignal profit of the ſoil, and the

the grantee hath at all times a right to enter and take it. *Hard.* 305, 401.

Although tithes are eſteemed part of the incorporeal inheritance, and by the common law were only of eccleſiaſtical conuſance; yet being in the hands of the lay proprietors are now conſidered as a temporal eſtate; for by the 32 *Hen.* 8. *cap.* 7. it is provided, that every lay perſon having any eſtate of inheritance, freehold, right, term, or intereſt in tithes, and being thereof diſſeiſed, ouſted, wronged, or otherwiſe kept from the ſame, ſhall have his remedy in the courts of law for them in like manner as for lands; and hence it is that an ejectment lies for tithes. Lies for tithes.

This remedy is given only to lay impropriators, and therefore the act of parliament leaves ſpiritual perſons to purſue their old remedy in the ſpiritual court. *Co. Lit.* 159. *Dyer* 116. *pl.* 71. But only for lay impropriators.

An ejectment lies only for tithes in kind, but does not lie where the tithes conſiſts in *modo decimandi*. See *Bacon's Abr.* head of *Tithes*. And for tithes in kind.

An ejectment was brought *de omnibus & omnimodis decimis in decem acris in D.* without ſaying *garbarum fœni, lanæ agnellorum*, or ſome other certainty of the nature or quality of the tithes, is ill, as it would be for one hundred acres of land, without expreſſing the ſeveral natures and qualities of the land. For in this action the plaintiff muſt be as particular and certain in his demand of them as he would be of land. 11 *Co.* 25. *Harpin's* caſe. *Moor* 837. *pl.* 1130. 1 *Rol. Rep.* 68. *S. C.* in which laſt book another exception was taken, that the entry and ejectment was laid to be in *May*, which was alſo held ill, becauſe no tithes to be ouſted of at that Ejectment brought of tithes in 10 acres in D. without ſpecifying their nature and quality, or of 100 acres of land, without expreſſing the nature and quality of the land, is ill.

that time of the year; but *quære* of this, for the law does not judicially take notice when tithes ariſe. *Palm.* 101. *S. C.* cited.

Not neceſſary to ſet forth the quantity of every ſort of tithe, as muſt be done of every ſort of land.

But in this action the plaintiff is not obliged to ſet forth the quantity of every ſort of tithe, as he muſt do of every ſort of land, becauſe it is in its nature uncertain, the quantity intirely depending on the goodneſs and fruitfulneſs of the land and ſeaſons, and therefore an ejectment *pro quadam portione granorum & fœni* was held good, becauſe impoſſible to ſay how much the quantity would be. 11 *Co.* 25. *Hard.* 57. *Dyer* 116.

Lies for a rectory.

An ejectment lies *pro rectoria*, becauſe a rectory conſiſts of a church, glebe lands and tithes. *Latch* 62.

And for a church, by the name of a meſſuage.

A church is a meſſuage, by which name it may be recovered, and the declaration is to be ſerved on the parſon who officiates divine ſervice. 11 *Rep.* 25. 1 *Salk.* 256.

And pro capella.

It was formerly held that an ejectment did not lie *pro capella*, becauſe it was *res ſacra*, which was not demiſable; but now ſince they are become lay inheritances, they are recoverable in ejectment as other lay eſtates, but it muſt be demanded by the name of a meſſuage, or it is not formal. 11 *Co.* 25. *Style* 101. 1 *Salk.* 256.

And for a place called the veſtry.

An ejectment for a certain place called the veſtry in *D.* is well enough, becauſe that place belonging to a church called a veſtry is perfectly known, and therefore the thing demanded is ſufficiently deſcribed to have execution thereof. 3 *Lev.* 96. *Huchinſon* and *Puller* adjudged.

Ejectment de mineriis carbonum in parochia de D.

An ejectment in the county palatine of *Durham*, the plaintiff declared upon a demiſe *de mineriis carbonum in parochia de D.* generally,

not saying how many mines, and had a verdict and judgment, upon a writ of error brought in *B. R.* the error assigned was in the declaration, because of the uncertainty thereof; for not setting forth the number of coal mines, so as the sheriff might know of how many to give possession. And for this reason the court inclined, that the judgment was erroneous; but then the plaintiff producing several precedents in *Durham*, and alledging that all the entries there in ejectments for coal mines were the same as in this case; the judgment was affirmed. *Carth.* 277. *Andrews* and *Whittingham*, 4 *Mod.* 143. *Comb.* 291. 1 *Show.* 364. 1 *Salk.* 255. *S. C.*

in Durham, without saying the number affirmed by precedents.

An ejectment lies not of a close, because it is of an uncertaint extent, nor will it mend the declaration, though the close be called by a particular name, because that also leaves the extent of it uncertain, so that the sheriff cannot tell what quantity of land to deliver in execution; and though the number of acres contained in the close should be mentioned in the declaration, and be set forth to belong to a messuage for which the ejectment was also brought; yet even that hath been held too general, because the nature and quality of the land is thereby left uncertain, so that the sheriff is still at a loss what to deliver the possession of, as whether meadow, pasture, *&c.* *Godb.* 53. 11 *Co.* 55. 1 *Rol. Rep.* 55. *Bridg.* 56. adjudged, being of an uncertain extent, and that the giving it a name did not help it; but *vide Cro. Eliz.* 235, 339. *Cro. Jac.* 654. which seem contrary.

Not of a close, because it is of an uncertain extent,

An ejectment of a piece of land called *D.* without shewing the contents. *Palmer*'s case, *Owen.* 18. the court was divided, but after adjudged

nor of a piece of land called D. without shewing the contents.

judged that it was well enough, becauſe it was but an action of treſpaſs, and damages were the principal, though it would be otherwiſe in a *præcipe*; but upon a writ of error in the exchequer chamber this judgment was reverſed. *Hetl.* 176. *Moor* 422. *pl.* 587. ſo adjudged in *Savil*'s caſe. 11 *Co.* 55. and the *S. P.* held and admitted to be law in *Style* 194. 1 *Lev.* 212. *Bridg.* 56. *Hard.* 133. *Palm.* 102. 3 *Lev.* 97. 1 *Salk.* 254. where *Savil*'s caſe is affirmed to be law by chief juſtice *Holt*.

For a cloſe called D. containing 3 acres of land good.

But an ejectment for a cloſe called *D.* containg three acres of land is good, becauſe the quality of the land is mentioned, the word *terra* ſignifying in law arable land. *Cro. Jac.* 435. *Palm.* 102. 4 *Mod.* 98.

Does not lie for a meſſuage and 40 acres of land, meadow and paſture thereto belonging, without diſtinguiſhing how much of each, nor for 5 cloſes called Long Furlong, containing 10 acres of arable and paſture.

An ejectment does not lie for a meſſuage and forty acres of land, meadow and paſture thereto belonging, without diſtinguiſhing how much of one ſort, and how much of the other. *Cro. Car.* 573, *Martin* and *Nicholi* adjudged. *Cro. Car.* 471. *S. P.* adjudged. *Hard.* 59. *S. C.* cited. So where an ejectment was brought for five cloſes called *Long Furlong*, containing ten acres of arable and paſture, it was held naught, becauſe not ſpecified how many acres of each there were, ſo that the ſheriff had no rule to govern himſelf by in the execution. *Knight* and *Syms* adjudged, 1 *Salk.* 254. 1 *Show.* 338. *Carth.* 204. 4 *Mod.* 42. 97 *Comb.* 198. *S. C.*

But of 20 acres of furze and heath is well enough.

But an ejectment of twenty acres *jampnorum et buer*' is well enough, becauſe intended of lands of the ſame nature, *viz* heath, on which gorſe and furze grow. *Cro. Car.* 179. 1 *Mod.* 90.

An

An ejectment ought to be brought for a thing that is certain; if it be of a manor *manerium de* A. *cum pertinentiis*; if of a rectory, *rectoriam de* B. and so many messuages, so many cottages, so many acres of arable, so many of meadow, and so many of pasture, *&c. cum pertinentiis in paroch' de* B. for land must be distinguished how much of one sort, and how much of another. *Cro. Eliz.* 339. 3 *Leon.* 13.

If of a manor it must be with the appurtenances & the lands, &c. distinguished.

Ejectment does not lie of waste; though the number of acres are inserted; the word being uncertain, and which may comprehend land of any quality, whereby the sheriff will be at a loss what land to deliver. See *Hancock* against *Price in Sccio. Hard.* 57.

Ejectment lies not of waste for the uncertainty of it.

Hammond was outlawed at the suit of another person, and lands in his possession were extended; a third person that claimed a title to these lands, brought an action of trespass and ejectment for them; and pleaded to the inquisition, and an injunction was prayed for the king to stay proceedings at law, and it was denied, because although a person outlawed cannot after extent prevent or avoid the king's title by any alienation, as appears 11 *Hen.* 7. yet the outlawry gives no such privilege to the possession of a disseisor, but that the disseisee may enter and bring his ejectment; for by the outlawry, the king has a title only to the profits, and no interest in the land. But it was ordered, That the plea to the inquisition should be tried first, and that the ejectment should be brought in this court, because the king's revenue was concerned. *Hammond*'s case, *in Sccio. Hard.* 176.

A person outlawed cannot after extent avoid the king's title by alienation.

An ejectment founded upon an outlawry ordered to be tried in the Exchequer, because the king's revenue is concerned.

Anderson

Aid prier cannot be pleaded after an imparlance,

Anderſon againſt *Arundel in Sccio. Hard.* 179. After Not guilty pleaded in ejectment, and in another town, the defendant prayed in aid of the king's leſſees for 99 years of his dutchy lands in truſt for the queen, as part, of her jointure, and baily to them; and it was denied by the court: and the chief baron held that in perſonal actions, aid does not lie of a common perſon till after iſſue joined upon the right of the matter, but not upon the general iſſue, becauſe it does not appear to the court, whether the right will come in queſtion or no; and if it does not, there is no cauſe of aid; nor can aid be prayed in another term after imparlance, becauſe there it is *ad reſpondendum*, and after ſuch an imparlance taken no aid lies: but in real actions aid prayer of a common perſon lies before iſſue joined, becauſe there the title of him in reverſion or remainder appears by the plea, for without ſhewing it he cannot draw his plea: but for the king's immediate tenant, or for his mediate tenant that joins with his immediate tenant, aid lies in a perſonal action as well before as after iſſue joined; but not for the king's mediate tenant that does not join with his immediate tenant; and it is a good counterplea to an aid prayer, to ſay that he claims under the ſame title, and in affirmance of it: ſo a writ of *Rege inconſulto* does not lie, but when it appears clearly to the court, that the parties title is in diſaffirmance of the king's; *vide* 2 *Ric.* 3. 11. 3 *Hen.* 6. There are two other caſes in *Hardres* concerning ejectments *in Sccio.* namely,

in perſonal actions aid prayer does not lie of a common perſon till after iſſue, but for the king's immediate tenant it lies either before or after:

in real actions it lies before iſſue of a common perſon:

the writ of Rege inconſulto does not lie, but where it appears that the party's title is in diſaffirmance of the king's.

Cother

Cother againſt *Eſſex*, *page* 89. Where the caſe was upon a ſpecial verdict whereby it appeared that a perſon died ſeized in tail to him, and the heirs male of the body of his grandfather, and the queſtion was, whether a leaſe made by the ſon (after he had entred) for 21 years rendring rent to the leſſor, his heirs and aſſigns was a good leaſe within the ſtatute of 32 *Hen.* 8. to bind the iſſue in tail.

Whether a leaſe made by a tenant in tail rendring rent to the leſſor, his heirs and aſſigns will bind the iſſue in tail.

And *Eccles* againſt *Calverley*, *page* 225. Where the queſtion was upon a ſpecial verdict, whether on a recovery ſuffered of a farm, and lands in *F.* ſuch part of that farm as lay in *H.* will paſs.

Whether on a recovery ſuffered of a term in F. ſuch part as lay in H. will paſs.

If the premiſſes lie in *London* or *Middleſex*, make the notice to appear the firſt day of the next term, for if made generally the tenant in poſſeſſion has the whole term to appear in; but if the tenements lie in any other county than *London* or *Middleſex*, make the notice to appear the next term generally.

If in London or Middleſex, the notice to appear the firſt day of the next term, if elſewhere the next term generally.

Serve each declaration perſonally, but if on defendant's wife let it be on the premiſſes, or the ſervice will not be good except in very ſpecial caſes, let it be ſerved before the eſſoign day of the term, and at the time of ſervice read the notice or fully explain the nature of it to the perſon ſerved.

To be ſerved perſonally, or on the wife upon the premiſſes.

The judgment is entred by the clerk in court, and ſigned by the maſter in the book of orders, and if againſt the caſual ejector, and the declaration is the common length, the expences are for entring the declaration 2*s.* the rule for judgment *Niſi* 2*s.* 2*d.* *Docquet*, 8*d.* ſigning 2*s.* duty 5*s.* writ of poſſeſſion 6*s.* 8*d.*

Where entred.

Proceedings in ejectment in moſt caſes conformable to the proceedings in the other courts.

The proceedings in ejectment in moſt caſes are conformable to the proceedings in the other courts of *Weſtminſter-Hall*, and in the appendix will be found the forms of the declaration, notices, rules, and writs of executions.

Of iſſues.

Iſſues are of two kinds upon matters of fact, and matters of law.

Iſſues are of two kinds upon matter of fact, or matter of law; an iſſue in fact is where the plaintiff and defendant have agreed upon a point to be tried by a jury; and iſſue in law is where there is a demurrer to a declaration, plea, *&c.* and a joinder in demurrer (which is an iſſue at law) to be determined by the judges. 1 *Inſt.* 71, 72.

The iſſue at law has already been treated upon, under the title (*Demurrer*), we now come to the iſſue in fact.

No iſſue being joined and jury ſworn, the jury was diſmiſſed.

Heath againſt *Walker* in *Middleſex*, *Trin.* 12 *Geo.* 2. Upon looking into the record, there was no iſſue joined, for it was *Et prædict'* the defendant, inſtead of the plaintiff, *ſimiliter*, it was therefore objected, that the chief juſtice had no commiſſion to try any iſſue, and the doubt was, what to do, for the jury had been ſworn, and upon adviſing with the bar, the chief juſtice diſmiſſed the jury; for he could not call the plaintiff, or ſuffer the defendant to take a verdict. *Trin.* 12 *Geo.* 2. in *Middleſex*, and *Str.* 1117. none but the defendant can call the plaintiff. *Str.* 267.

No record of preceding term can be read before

Trin. 8 *W.* 3. 17 *June*, it is ordered, "That "no record of any precedent term be read "before

filed, and iſſues and judgment muſt be entred of the ſame term the iſſues were joined.

" before it is filed; and that all iſſues and " judgments ſhall be entred by the reſpective " attornies of the ſame term ſuch iſſues are " joined, or judgment ſigned.

28 *May* 1742. It is ordered, " That where " iſſue is joined the plaintiff do enter the iſſue " upon record when required by the defen- " dant.

The plaintiff muſt enter the iſſue when required by defendant.

On the iſſue being joined the ſolicitor pays 4*d.* *per* folio, and adds 4*d.* more *per* folio for himſelf, making 8*d.* *per* folio for drawing the iſſue. The plaintiff's attorney delivers over the iſſue to the defendant's attorney to be copied by him according to the ancient practice, and thereupon notice of trial is given in the book of orders.

Plaintiff's attorney delivers over the iſſue to defendant's attorney to be copied by him.

Of iſſues directed.

As to iſſues directed, they are ſubjected to the courts of equity, and being derivative from them want no place here, further than to refer the reader to a few caſes of this kind in the exchequer which have been reported, namely,

Iſſues directed are from a court of equity.

Bunb. 43. earl of *Scarbrough* againſt *Hunter & al'*, to try a cuſtom of tythe of fiſh though no proof of it had been made.

Cuſtom of tythe of fiſh.

Bunb. 87. *Fox* againſt *Rutty*, to try whether the tythes in queſtion are due to the rector or vicar.

Whether tythes due to rector or vicar.

Bunb. 143. Dr. *Bennet* againſt *Treppaſs & al'*. On an iſſue directed to try whether there had been any variation in payment of tythes or money in lieu thereof for houſes in *London*, according to the ſtatute of 37 *Hen.* 8. an order was obtained for plaintiff to produce at the trial the books of the former rectors.

Book of former rectors to be produced on trying whether variation in paying tythes.

Whether beech is timber in the place in queſtion.

Bunb. 192. *Bibye* againſt *Huxley*, to try whether beech was eſteemed timber in the place in queſtion on a bill for tythes of wood.

Whether Modus or not.

Bunb. 267. *Taylor* clerk, againſt *Walker*, to try a *Modus* of 3*s.* 4*d.* for five cloſes where it appeared in evidence that the *Modus* extended to two more cloſes, and a new trial was granted for reaſons given by the reporter.

The like.

Bunb. 340. *Laithes & al'* againſt *Chriſtian* clerk, vicar, *&c.* to try a *Modus* though not proved exactly as laid in the bill.

Lands of the Ciſtercian order diſcharged for ever of tythes.

Hard. 101. *Stavely* againſt *Ullithorne*, to try whether the lands in queſtion were diſcharged of tithes as having belonged to an abbey of the *Ciſtercian* order; and it was held *per Curiam* clearly, that the council of *Lateran*, which freed that order from payment of tithes, was a general law received in *England*, and if theſe laws were diſcharged of tithes from the time of that council, that no after covenant, or contract made by the abbot to pay tithes could diſpenſe with this privilege, or make them liable to tithes; for once diſcharged by this council, and always diſcharged; for this council is as forcible as an act of parliament, which concludes all parties; and the court were alſo of opinion, that if there was any ſuch agreement for payment of tithes before the council, that yet this council, as a general law, which includes all mens conſent, had diſſolved it, and the lands were diſcharged.

Whether a will of lands be revoked by a ſubſequent will.

Hard. 374. *Seymour* and wife againſt *Northworthy*, to try whether a will of lands was revoked by a ſubſequent will which deviſed no lands.

Hard.

Hard. 472. *Ruſkworth & al'* againſt the counteſs of *Pembroke* and *Currier* on an iſſue directed, to try a title, the defendant was not allowed to make uſe of the depoſitions in equity on the trial, the parties to each not being the ſame.

Depoſitions in equity not allowed to be uſed on trying an iſſue directed, the parties not being the ſame.

The proceedings at law on an iſſue directed are under the ſame rules as other iſſues at law, conſiſtent with the time preſcribed by the court of equity from whom the iſſue is directed; but the judgments are not to be entred upon the *poſteas* upon iſſues directed, but ſuch *poſteas* are filed on the file of writs in the office of pleas, and the bagbearer of the office attends with the file as the court of equity ſhall direct, for which he hath each attendance his fee of 3*s.*

No judgment entred on the poſtea.

Of notices of trial and inquiries, and of countermands.

In regard to notices of trials, *&c.* the act of parliament of 14 *Geo.* 2. which lengthens the time in the other courts from eight days to ten days, does not affect the notices given in the office of pleas, becauſe by the practice of this office, more time was allowed than the act required, as for inſtance, 14 days notice of trial was and is required by the practice of the office where the act requires only ten; but where the practice is contrary to the expreſs proviſion of the act, the act muſt neceſſarily control the practice.

Notices of trial not controlled by ſtatute of 14 Geo. 2. becauſe longer time is given than required by the ſtatute.

The old rules of practice are as follows,

Eight days notice if in London or Middleſex, if defendant lives within 40 miles, and 14 days in all other caſes.

" That notices of trials or inquiries in *London* " or *Middleſex*, be given (where the defendant " dwells within forty miles of *London*) eight " days excluſive of the day wherein notice is " given, and where the defendant dwells above " forty miles from *London* fourteen, days ex- " cluſive of the day of notice, and all notices " of trial to be had at the aſſizes, ſhall be given " fourteen days before the commiſſion day; " notices of writs of inquiry to be executed in " any other place to be given ten days before " the execution thereof, and all trials and in- " quiries without ſuch notices as aforeſaid to " be void."

If no proceedings according to notice, defendant to have coſts, unleſs countermanded 4 days before if in London and Middleſex, and 10 days if elſewhere.

" That in caſe of ſuch notice of trial, and " no proceedings, the defendant upon motion " is to have his coſts of his former trials, at- " tendance to be taxed by the maſter of the " office, unleſs the plaintiff give the defendant " notice as followeth, *viz.* four days before the " day of trial in *London* and *Middleſex*, and ten " days before the trial elſewhere that he would " not proceed, or ſhew cauſe to be allowed in " excuſe of ſuch coſts, and that the plaintiff " ſhall not proceed to trial, upon any ſecond " notice, until he hath paid the defendant ſuch " coſts as the court have taxed, and allowed " the ſaid defendant for his attendance upon " ſuch former notice."

Notices of trial to be given in the book of orders, and not elſewhere.

" That all notices of trial ſhall be ſet down " in the book of orders in the ſame office, with " the day when ſuch notices are given, and " that all other notices given to be void."

In

In all notices the diſtance from *London* is by computed miles (not poſt miles), for the rule as to thoſe notices was antienter than the poſt miles.

In Notices computed miles are intended.

Bates againſt *Pettipher*, *Mich.* 7 *Geo.* 2. The defendant lived at *Ayleſbury*, and not having fourteen days notice of trial, moved to ſet aſide the verdict, upon an affidavit that it meaſured forty-two miles from *London*, and paid for ſo many poſt.

On the part of the plaintiff it was ſworn, that it was computed to be but thirty-three miles, *Et per curiam*, We muſt go by the uſual computation, our rule was antienter than theſe poſt miles, and conſequently reſpected the computation before the erection of poſt miles. It was therefore held that the notice was good. *Str.* 954.

All notices of trial muſt be given in the book of orders, but notices of executing inquiries may be given in the country, in which caſe ten days are ſufficient, and has been the practice long before the memory of any now living, and conformable to the above rules; but in caſe they be given in the book of orders, the notice muſt be fourteen days as in caſes of notices of trial.

All notices of trial muſt be given in the book of orders, but notices of inquiry may be given in the country, and but 10 days there.

Notices of counter-mand are eight days in cauſes where the notices of trial, and of inquiry are fourteen or ten days, and two days counter-mand will be ſufficient where the notices of trials, and of inquiries are only eight; this has been very many years the practice, but under what rule of court does not appear.

What notice of counter-mand neceſſary.

In caſe the parties find it neceſſary to put off the trial on account of the abſence of any witneſs, an affidavit muſt be made that the party

Application to put off a trial muſt be by affidavit, and is motion in court.

is adviſed, and believes the perſon abſent is a material witneſs, and that he cannot ſafely proceed to trial without his evidence, and that he is expected to return home in (mentioning the month or year) and not before, and on notice of motion the court will in their diſcretion put off the trial to a reaſonable time.

If cauſe not tried or counter-manded, defendant ſhall have his coſts of attendance upon ſuch notice, on new notice the court will not ſtay trial for nonpayment of ſuch coſts.

If plaintiff does not proceed to trial or counter-mand in time, defendant on affidavit of attendance, and neceſſary expences ſhall have his coſts; but altho' the plaintiff does not proceed to trial whereby coſts are taxed for defendant, and afterwards new notice, yet the court will not ſtay the trial for not paying theſe coſts (except in ejectment), becauſe defendant hath another remedy to recover them by *ſubpæna*, and attachment.

The forms of the iſſue, record, jury proceſs, and inquiry are all inſerted in the appendix.

Of the jury proceſs.

How to teſte] and return the venire facias jurator', the diſtringas.

The *Venire facias jurator'* for a trial muſt be returnable ſometime in the term preceding the day of trial, and the *diſtringas jurator'* muſt be teſted on the day of the return of the *Venire facias*, or any day after in the ſame term preceding the day of trial, and made returnable the laſt day of the term in which the cauſe is tried, if tried in the ſame term with the return of the *Venire facias*, or the firſt return of the following term, if the cauſe is tried at the ſittings after term or at the aſſizes.

Hil.

Hil. 14 & 15 *Car.* 2. *in Sccio. anonymus.* The award of the *Venire facias adjurator'* upon the roll was 17 *April*; and the *Venire borne Teſte* the 18 of *April*; and yet it was amended after verdict: becauſe the award upon the roll is the warrant, and it is, but the default of the clerk, and it is all one as if the *Venire facias* had *borne Teſte* before the award upon the roll, or upon the Lord's-day. *Hard.* 321. See *Str.* 138.

Venire facias adjurator', amended after a verdict.

Eaſter 15 *Car.* 2. In *May*, *anonymus* a *diſtringas* iſſued *in Sccio.* againſt the jurors returnable *Tres Trin. niſi prius venerit Mathews Hale, mil' capital' Baro, &c.* on ſuch a day *ejuſdem menſis Junji*, whereas no month of *June* was mentioned before: after verdict this was moved in arreſt of judgment, as a diſcontinuance; and it was held by the chief baron, and the whole court, that the word *ejuſdem* ſhall be void, and word *Junji* ſhall ſtand, and be intended *June* next enſuing, as a covenant to pay money at *Michaelmas*, ſhall be intended *Michaelmas* next. *Hard.* 330.

Diſtringas ad jurator amended after verdict, and upon motion in arreſt of judgment.

Every day of the ſittings is but accounted one day, ſo that though the court ſits more than one day, yet there is no variation in the record or jury proceſs on that account.

The ſittings accounted but one day though they ſit more.

The commiſſion which is directed to the judges of aſſize is annexed to the exchequer record, and is peculiar to that court, and it was neceſſarily inſtituted to impower the judges of aſſize to take cognizance thereof, becauſe the act of parliament of *Edward* the firſt, which directed trials by *Niſi prius*, takes only notice of the two benches.

The commiſſion a writ peculiar to the exchequer.

This point ſeems to have had a ſolemn determination in the cauſe of *Tyle* againſt *Buckenham* hereafter mentioned under the title *Trials*.

Though

The extra charge of the commiſſion trivial, if compared with the expence of paſſing records in the other courts.

Though the charge of the commiſſion is an extra charge to the parties, yet as there are no fees payable for paſſing the record in the office of pleas, but what is included in this commiſſion, and the common jury proceſs, this *extra* charge is very trivial comparative to the fees ariſing upon the paſſing of records in the other courts, eſpecially if they are of any length.

The ſollicitor pays 11 *s.* for the commiſſion, whether the record be long or ſhort, and 4 *s.* 8 *d.* for the *venire fac. ad jur.* and 5 *s.* 8 *d.* for the *diſtring.* to which jury proceſs the ſollicitor adds his fee of 6 *s.* 8 *d.*

Of records.

New tranſcript of a record, and poſtea indorſed by the proper officer thereon, the old one being deſtroyed by accident.

Langford and *Roſe* againſt *Stokes in Sccio. Mich.* 1751. It was ordered, "That a new tranſcript of the record of the iſſue ſent and tried at *Cheſter* aſſizes ſhould be made, and that the ſame ſhould be inſpected and ſigned by the deputy clerk of the pleas, at the expence of *Roger Comberbach*, in the room of the tranſcript lately made, which appears to the court to have been partly deſtroyed by accident, and that the prothonotary upon the new tranſcript ſo to be made do indorſe the proper return of the verdict taken in this cauſe."

Loſs of the record ſupplied by a new entry. Lill. Entr. 523.

King qui tam againſt *Bolton*. The defendant having brought error in parliament, the record was tranſcribed, and as it was carrying to the houſe of lords, the original was picked out of the officer's pocket: the houſe of lords received the tranſcript, without examining it. And now this court ordered a new entry to be made.

They

They were attended in vacation at their chambers, but ſaid they could not do it there. And afterwards the judgment of *B. R.* was affirmed in parliament. And *Paſch.* 9 *Geo. B. R. inter Needham et Grano*, the like leave was given, on a loſs of the roll by the attorney. *Str.* 141.

Poſtea loſt, and a new one ordered.

On a motion for a new trial, the *poſtea* was brought into court; and after the new trial had been denied, the *poſtea* could not be found. The court on debate ordered a new one to be made out from the record above, and the aſſociates notes. *Hil.* 20 *Geo.* 2. *Dagril* againſt *Bridg. Str.* 1264.

Of judgments, as in caſe of a nonſuit.

28 *May* 1742. It is ordered by the court, "That where iſſue is joined, the plaintiff do "enter the iſſue upon record when required by "the defendant."

The ſollicitor wants no inſtructions hereupon as this rule was occaſioned by the ſtatute of 14 *Geo.* 2. *cap.* 17. which gives the courts of *Weſtminſter-hall* a diſcretionary power of giving judgment, as in caſe of a nonſuit for want of proceeding to trial after iſſue joined.

Of double fees at the aſſizes.

Double fees on exchequer records aboliſhed.

As double fees were heretofore extorted at the aſſizes on exchequer records, under pretence that they were all crown cauſes, which raiſed objections to the prejudice of the office of pleas, a clauſe was inſerted in an act of 23 *Geo.* 2. *cap.* 26. *ſect.* 10. for continuing ſeveral expiring

expiring laws, and for other purpoſes therein mentioned; as follows:

"And whereas the taking of large fees by "the officer of aſſize and *Niſi prius* in the re- "ſpective circuits of this kingdom, upon re- "cords iſſuing out of the office of pleas of his "majeſty's court of exchequer at *Weſtminſter* "between party and party, than are taken on "ſuch records iſſuing out of any other court, "is a grievance to the ſubject; Be it enacted "by the authority aforeſaid, that from and af- "ter the 24th day of *June* 1750. no officer or "other perſon whatſoever ſhall demand, take "or receive any greater or other fees, upon "ſuch records iſſuing out of the ſaid office, "than are taken upon records in cauſes of the "like nature iſſuing out of the *King's Bench* "and *Common Pleas* at *Weſtminſter*."

Of Trials.

Trials by jury are of matters of fact.

The trials by jury are of matters of fact; there are alſo trials by the court as to matters of law which have been treated on under the title of demurrers. There are other kinds of trials, ſuch as matters of record which are tried by the records themſelves. *Str.* 76, 532.

Alſo ſome things ſhall be tried by the biſhop's certificate, and ſome by inſpection. 2 *Lill. Abr.* 602.

Nothing that can be tried by an iſſue, can be tried otherwiſe.

Nothing that is triable by an iſſue can be directed to be tried otherwiſe, irregularities in ſuing out a judgment or execution, are tried by reference, *&c.* but other matters ſubſequent to judgment by an *audita querela*. *Combr.* 8, 14.

If

If an iſſue be joined of a matter triable in *Wales*, the record ſhall not be ſent there to be tried, but ſhall be tried in the next county of *England* adjoining thereto, the form whereof in the record may be ſeen in the appendix.

If the iſſue be of a matter in Wales, the trial ſhall be in the next Engliſh county.

The earlieſt iſſue joined by record and tried, and the record brought in may be ſeen. *Tyle* againſt *Buckenham in Mich.* 19 *Ric.* 2.

The entry thereof in the *Repertorium* is in theſe words: *Eſſex, ſſ. Plitm. pro Rad'o Tyle quer. verſus Joh'em Buckenham de Havering de deb'o per breve in quo plito. prima lex veredicta fuit in ſc'c'io & conceſſa.*

Trial by record, how long ſince.

In *Theedam* againſt *Morris*, *Trin.* 1734. The court of exchequer ordered that plaintiff ſhould not proceed to trial till he has paid the coſts taxed by the maſter for not going to trial at the ſittings after laſt term.

Plaintiff ordered not to proceed to trial till he has paid coſts for not going to trial before.

Trin. 8 *W.* 3. 27 *June.* It is ordered, That in all cauſes to be tried in *London* and *Middleſex* before the chief baron, where the cauſe ſhall not be entred with the marſhal two days before the day of trial, a *ne recipiatur* may be entred at the inſtance of the defendant.

If cauſe not entred with the marſhal 2 days before the day of trial at the ſittings, defendant may enter a ne recipiatur.

This rule was confirmed by the like rule on the 25 *Nov.* following.

Hil. 14 *Geo.* 2. " Whereas for regulating " trials by *Niſi prius* in the circuits, an order " was made by all the judges of *England* in " *Trinity* term in the 10th and 11th years of " his preſent majeſty,

" *That in every cauſe to be tried before them* " *in their reſpective circuits, the writ and record* " *ſhould be entred together, and that no record* " *ſhould be received without the writ*, which or-

" der

" der hath not fully anſwered the intent there-
" of; but notwithſtanding many inconvenien-
" cies do ſtill happen to the ſuitors by delay-
" ing or putting off the trials of their cau-
" ſes; now in order more effectually to prevent
No record to be received at the aſſizes, unleſs entred with the marſhal before the firſt ſitting of the court after the commiſſion day, except in Yorkſhire and Norfolk, and there to be entred before their firſt ſitting of the court, on the 2d day after the commiſſion day.
" theſe inconveniences for the future; It is
" ordered by all the judges of *England*, that
" no writ and record of *Niſi prius* ſhall be re-
" ceived at the aſſizes in any county in *Eng-*
" *land*, unleſs they ſhall be delivered to and
" entred with the marſhal before the firſt ſit-
" ting of the court after the commiſſion day,
" except in the counties of *York* and *Norfolk*,
" and there the writs and records ſhall be de-
" livered to and entred with the marſhal before
" the firſt ſitting of the court, on the ſecond
" day after the commiſſion day, otherwiſe they
" ſhall not be received. And that every cauſe
" ſhall be tried in the order in which it is ſo
" entred without any preference or delay, un-
" leſs it ſhall be made out to the ſatisfaction of
" the judge in open court, that it is impracti-
" cable or inconvenient ſo to do, who there-
" upon may make ſuch order for the trial of
" the cauſe ſo put off as to him ſhall ſeem
" juſt.

A liſt of cauſes to be fixed in court during the time of the aſſizes.
" And it is further ordered that a liſt of the
" cauſes when ſo entred as aforeſaid ſhall be
" made by the marſhal, and forthwith fixed up
" in ſome publick place in the *Niſi prius* court,
" there to remain during the whole time of the
" aſſizes."

Where defendant is not prepared, or upon a ſurpriſe, upon petition and affidavit, the court will
When a defendant is not prepared to try his cauſe, upon petition and affidavit of the reaſon, the judge will order the cauſe to be ſtayed till another day at the ſame aſſizes, or in *London* or *Middleſex*, till next term, on payment of coſts.

And

And in caſe at a trial the court ſees that one of the parties is ſurprized through ſome caſualty, and not by any fault of their own, they may in their diſcretion put off the trial to another time until ſuch party is better prepared. 2 *Lill.* 609, 610.

Stay the cauſe on payment of coſts.

Sir *Robert Raymond* moved upon the ſtatute of 13 & 14 *Car.* 2. *cap.* 11. *ſect.* 29. for a commiſſion to examine witneſſes abroad, in order to make uſe of the depoſitions at the trial of the cauſe, though the words of the act are, *a commiſſion out of the high court of chancery*; but he inſiſted, this being a remedial law, and though it mentions only one inſtance, yet it ſhall extend to others within the ſame equity; as the act, which ſays *juſticiarii* ſhall grant a bill of exceptions, has been extended to the chancellor in the petty bag, and the barons of the exchequer; the ſtatute of *Circumſpecte agatis circa res tangentes epiſcopum Norwicenſem*, which Lord *Coke* ſays, is put only for an inſtance, and extends to other biſhops. The ſtatute of *Weſtminſter* 2. *cap.* 12. gives an action of debt upon an eſcape againſt the *Warden of the Fleet*, and this has been conſtrued to extend to ſheriffs, gaolers, *&c.* though only the *Warden of the Fleet* is named. Lord chief baron *Bury* and baron *Price* were of opinion, that ſuch commiſſion ſhould go, not upon the act of parliament, but by virtue of their original juriſdiction; baron *Forteſcue Aland*, that it might go, even upon the ſtatute; baron *Montague* diſſenting in both. *Jenkins qui tam, &c.* againſt *Larwood*, *May* 31, 1717. *Bunb.* 13. *Hard.* 506. *Hard.* 32.

Commiſſion to examine witneſſes abroad, in order to make uſe of their depoſitions at the trial of the cauſe.

In

The jury fined for not keeping together before the verdict was given.

In *Middleſex inter Warley* and *Arundel* in the office of pleas, it is certified on the *poſtea* of this record in *Hil.* 14 *Hen.* 7. That the jurors being ſworn, went from the bar in cuſtody of a bailiff, and were agreed of a verdict, and came back to give up their verdict, whereupon it was alledged by the defendant, that the jurors being in the bailiff's cuſtody, did eat and drink; one of the jurors went at large from his fellows, and prayed that it might be examined, which being examined, it appeared that the jurors were agreed before they did eat and drink, and that one of them did go into a field in ſight of the bailiff and came to his fellows, whereupon their verdict was taken, but every juror was fined at 3s. 4d. and the *poſtea* returned and judgment entred.

Whether a juror can be withdrawn by the attorney general in an information in actions qui tam.

In *Mich.* 1726. *Bunb.* 220. *in Sccio. nota*, a queſtion aroſe, whether the attorney general upon an information *qui tam*, *&c.* could withdraw a juror, upon an information in the attorney general's name only, it was admitted he could enter a *non pros* upon that information, which in effect amounted to withdrawing a juror.

1 *Inſt.* 139. was mentioned for the defendant; but to that the attorney general ſaid, it related only to *actions qui tam*, not to informations, and in theſe informations the attorney general only joined iſſue.

Baron *Price:* Nothing but the practice of the court can juſtify that, which is only to ſave the king's right.

2 *Keb.* 506. *pl.* 8. 1 *Inſt.* 139. 2 *Show.* 487. 18 *Eliz. cap.* 5. *Stat.* 6 *Geo. cap.* 21. *ſ.* 41. 1 *Vent.* 28. *Raym.* 84. 2 *Ro. Abr.* 679. *p.* 10. *Kelynge* 25, 6.

Quære the reſolutions in *Gravenor qui tam* againſt *Bene*, *May* 17, 1726. and *Farewell qui tam* againſt *Norris* when *Lechmere* was attorney general, *Trin.* 11 *Ja.* 1. *Rot.* 5. & 42. *Bede qui tam* againſt *Brown* and *Drury*.

Damages may be encreaſed by the court after a verdict where the word mahemavit is in the count, and in an action of battery the court may encreaſe the damages upon their view if the manner of the battery were alledged in the count.

Auſtin verſus *Hilliers & al. Paſch.* 17 *Car.* 2. *in Sccio.* In treſpaſs for an aſſault, battery and mayhem, Not guilty was pleaded, and the jury gave the plaintiff but ten ſhillings damages; but the court, upon view of the mayhem, ſeeing that his leg had been broke, and upon affidavit of what charges the plaintiff had been at to the chirurgeon, encreaſed the damages to 20 *l. niſi cauſa*, *&c.* and now cauſe was ſhewn to the contrary, *viz.* becauſe it does not appear by the declaration in what part of his body the plaintiff was maimed; as in 1 & 2 *Phil.* & *Mary*, *Dyer* 105. and a like caſe was cited in *B. R.* 1652. but on the contrary ſide *Latch's Rep.* 225. *Cooper*'s caſe was cited to have been adjudged, that the plaintiff in his declaration need ſay no more, than that he was maimed, without alledging in what part of his body in particular.

Hale, chief baron: If the plaintiff alledgeth that he was maimed, that is ground enough to encreaſe the damages, without alledging in what part of his body; but if the declaration does not expreſly alledge a mayhem, there we cannot increaſe them. And upon this diverſity former caſes have been adjudged. But upon the bringing of 20 *l.* into court, a day was given to the next term, to ſhew cauſe why execution ſhould not be awarded.

And afterwards in *Trin.* term 17 *Car.* 2. it was moved again, and held *per Hale* chief baron *et tot. curiam*; that damages may be increaſed,

where the word *mahemavit* is in the count, but that the uſual and better way is to expreſs the manner of the mayhem. They held likewiſe, that in an action of battery, the court may increaſe the damages upon their view, if the manner of the battery were alledged in the count, and judgment was given *pro quer.* Hard. 408.

Action of debt grounded upon ſtat. 6 G. accrues upon a demand and refuſal, the exact ſum certified to be due muſt be demanded.

At the ſittings in *Middleſex May* 13, 1724. In *Sccio.* debt was brought upon the certificate of the commiſſioners for ſtating the debts due to the army, purſuant to the ſtatute 6 *Geo. cap.* 17. for one hundred and five pounds eighteen ſhillings and ſeven-pence farthing, certified to be due to the plaintiff, for which the ſtatute gave an action of debt upon a demand made and refuſal; in proving the demand, it was, of one hundred and five pounds eighteen ſhillings and ſix-pence farthing, inſtead of ſeven-pence farthing, which varied from the ſum certified. Lord ch. baron *Eyre* (before whom this cauſe was tried) was of opinion, that this certificate was in the nature of a judgment, that it being a debt thereby reduced to a certainty, and the demand being of a different ſum, it was fatal; and thereupon the plaintiff was nonſuited.

A naked authority delegated to another by expreſs authority for that purpoſe. Salk. 96.

Nota; The plaintiff gave an authority to *Moore* his attorney to make the demand, or to authorize any other perſon to do it, who accordingly executed a letter of attorney to another to do it. So it was objected for the defendant, that a naked authority could not be delegated; but the chief baron was of opinion it might, by expreſs authority for that purpoſe, otherwiſe not. *Palliſer* againſt *Ord.* Bunbury 166.

Rule that plaintiff's leſſors place of

In *Hil.* 1754. *Philips* leſſee of *Evans* and wife againſt *Philips*, in *Sccio. MS.* a rule was obtained

obtained that the clerk in court for the leſſor of the plaintiff ſhould give an account to the defendant's clerk in court, of the places of abode of the ſaid leſſors, and that till ſuch account be given, the plaintiff ſhall not proceed to trial, but be at liberty to give notice of trial.

abode be given to defendant.

Of new trials and miſ-trials.

New trials may be granted generally in ſeveral caſes, *viz.* for want of notice of the former trial, or where defendant had not ſufficient or due notice, or if exceſſive damages are given, unleſs the judge who tried the cauſe report, that he believed the jury gave a verdict according to their conſciences, or if a verdict was given againſt evidence, or where the plaintiff before the trial treats the jury, or if there was any fraud, *&c.* but a new trial ought not to be allowed for want of evidence at the former trial which the party might then have produced, and it hath been denied where the defendants forgot to bring a ſettlement at the trial.

In what caſes new trials may be granted.

Wherein it ought not to be allowed.

No new trial ſhall be granted for too ſmall damages, unleſs where an action of covenant is brought for a ſum certain, and the jury give damages under the ſame.

Not for too ſmall damages.

No new trial can be granted in a *qui tam.* Str. 899.

Not in a qui tam action.

After a motion made in arreſt of judgment, the party ſhall not move for a new trial, but after motion for a new trial, he may move in arreſt of judgment. 2 *Salk.* 647.

Not after motion in arreſt of judgment.

Where matters of record are tried by a jury it is a miſ-trial; but if the matters of record are mixed with matters of fact, trial by jury is

A miſ trial, what.

The judgment to be arreſted. Miſ-trial helped by the ſtat. of Jeofails.

good. *Hob.* 124. On a miſ-trial judgment may not be given, but ſhall be arreſted; but a miſ-trial is helped by the ſtat. of Jeofails.

A miſ-trial for *venue* to come from more pariſhes than whence the cauſe of action aroſe, and to try a Welch cauſe in Monmouthſhire as prox' com' Anglican'.

It was determined a miſ-trial for the *venue* to come from more pariſhes than whence the cauſe of action aroſe, in *Trin.* 7 *James in Sccio. Leviſon* againſt *Kirk*, *Lane* 65. and it was held clearly a miſ-trial to try a *Welch* cauſe in *Monmouthſhire* as *prox' com' Anglican'*, in *Trin.* 1657, *in Sccio. Morgan* againſt *Morgan* in ejectment of lands in *Brecknockſhire*. Hard. 66.

A new trial granted for miſbehaviour of the jury.

In *Melliſh* againſt *Arnold*, *Nov.* 20. 1719, *in Sccio.* In an action brought againſt an officer for a ſeiſure *abſque probabili cauſa*, a new trial was granted, becauſe the jury threw up croſs or pile, whether they ſhould give the plaintiff three hundred pounds or five hundred pounds damages, and the chance for five hundred pounds came up. And note, the court now made a rule, that *Middleſex* juries at *Niſi prius* ſhall be paid in court. *Bunb.* 51.

The general order taken notice of in the above report, was made 6 days after in *Mich.* term 6 *Geo.* 1. namely "That the juries ſhall "be paid in open court in all trials."

Other caſes wherein new trials were granted.

Other new trials ordered *in Sccio.* ſee *Bunb.* 51. *Nannich* againſt *Farwell*, after a ſpecial verdict ſigned by counſel. *Bunb.* 70. *Rhodes* againſt *Lovit*, relative to an averment of being ready to transfer ſtock. *Bunb.* 259. Dutcheſs of *Marlborough* againſt *Grey*, on evidence being given for the defendant on the general iſſue, that the *locus in quo*, &c. was a common highway, and

and becauſe the inheritance appeared upon the evidence to be in the crown, it being the great park at *Windſor*, of which the plaintiff was only ranger.

Of trials by proviſo.

Trials by proviſo were where the plaintiff deſiſted in proſecuting his ſuit, and did not bring it to a trial in convenient time; the defendant in ſuch caſe might take out the *venire facias* to the ſheriff, which hath in it theſe words, *proviſo quod, &c.* to the end, that if the plaintiff took out any writ to that purpoſe, the ſheriff might ſummon but one jury upon them both; and this was called going to trial by proviſo. *Old Nat. Br.* 159.

Trials by proviſo what.

Trials by proviſo on the part of the defendant were much practiſed before the ſtatute of 14 *Geo.* 2. *cap.* 2. for obtaining judgment as in caſe of a nonſuit, if the plaintiff did not proceed to trial after iſſue joined; but by that ſtatute, trials by proviſo became uſeleſs and are now quite diſuſed, and therefore unneceſſary to be further taken notice of.

Are now diſuſed, occaſioned by the ſtat. for obtaining judgment as of nonſuit.

Of trials at bar.

Trials at bar are appointed by the ſtatute of *Weſtm.* 2. where the cauſe requires *magnam examinationem.* They are granted either upon the value of the land, or difficulty of the title.

In what caſes trials at bar are granted.

And in *Preſton* againſt *Lingen* on the demiſe of lord *Conningſby*, the plaintiff moved on the common affidavit of value, for a trial at bar, which was oppoſed by the defendants on another

If the plaintiff makes but one title, he has a right to join ſeveral claimants together.

ther affidavit, that they ſeverally held but ſmall parcels of lands by different titles; and this is putting it in the power of the plaintiff, by joining ſeveral together, to bring the owner of but 5 *l. per ann.* to the bar. *Sed per curiam*, There muſt be a trial at bar, for if the plaintiff makes but one title to the whole, he has a right to join them all together.

A peer not compellable to name a good plaintiff for ſecurity of coſts.

It was moved that the leſſor, having privilege, might name a good plaintiff to be liable to coſts; but the court denied it with ſome reſentment, ſaying it had been often attempted, and as often refuſed. *Str.* 479.

No trials at bar in an iſſuable term.

No trials at bar are allowed in an iſſuable term, nor before iſſue joined, for it is below the dignity of the court to do it till they know whether the iſſue joined will be a matter of difficulty or not. *Str.* 696. Nor will a trial at bar be granted in a cauſe ariſing in *London*, the citizens not being to be brought out of the city. *Str.* 856.

Nor againſt a citizen of London.

The crown is not intitled to a trial at bar of courſe, where there is a proſecutor.

The king is intitled to have his own cauſe tried at bar, but where the ſuit is not at his expence the uſual affidavit muſt be made to obtain it.

The *King* againſt *Hales*, *Mich.* 2 *Geo.* 2. Mr. Attorney moved for a trial at bar, on an information filed by him for forgery. But it not being carried on at the expence of the crown, but of a private proſecutor, the court held that he muſt make out the uſual requiſites to bring it to the bar. So the motion was denied. And at another day Mr. attorney moved on an authority from the king to proſecute, and it was granted as of right to the king in his own cauſe. *Str.* 816.

Tried by the roll.

In a trial at bar the cauſe is tried by the roll, of which copies are delivered to each of the barons.

The

The day of a trial at bar must be appointed by the court, but the plaintiff may countermand, and in such case it cannot be brought to trial, unless some day be appointed again by the court.

The day of trial must be appointed by the court, but may be countermanded by the plaintiff.

If the plaintiff or the defendant would have a special jury, the court must be moved, and a rule will be made for the sheriff to attend the deputy clerk of the pleas with the freeholders book, at the expence of the party that moves, and the deputy in the presence of the attornies on both sides, shall name thereout forty-eight of the freeholders, of whom twelve shall be struck out on each side, and the remaining twenty-four shall be returned by the sheriff. The rule for striking the jury must be served on the attorney of the other side, and on the under sheriff or his deputy, with the deputy's appointment of the day for striking underwrote. The party that moves for the special jury may at the same time move for a view (if necessary), which will be ordered, and thereupon will be inserted in the *distringas* a clause commanding the sheriff that he cause six or more of the jury returned and named in the writ, to take a view of the place in question, on, *&c.* (naming a day before the day of trial), and that *A. B.* of, *&c.* on the part of the plaintiff, and *C. D.* of, *&c*, on the part of the defendant, do shew the place in question to the said six or more of the jury, who are to view the same.

Special jury.

And view.

The expences of the view are to be equally borne by both parties, and no evidence on either side to be given at the time of taking the view.

Expence of the view.

And of the ſpecial jury.

By the ſtatute of 3 *Geo.* 2. *cap.* 25. *ſect.* 16. The whole charge lies on the party applying for a ſpecial jury, but by *Str.* 1080. The court of king's bench held that if the verdict goes on that ſide, which moved for the ſpecial jury, the extraordinary allowances to them, and all the expences, except what attend the actual ſtriking, ſhould be taxed and allowed againſt the loſing party.

Againſt the common courſe to challenge the jury at bar for want of Hundredors.

Hale chief baron ſaid in the caſe of attorney general againſt *Pickering*, *Trin.* 14 *Car.* 2. *in Sccio.* That it is againſt the common courſe to take a challenge for want of *Hundredors*, when the trial is at the bar, upon a jury returned at the denomination of an officer of the court, where there are but twenty-four left by the parties themſelves. Reported by *Hard.* 228.

Plaintiff nonſuited at bar, but paid no coſts, the king being a party who neither pays nor receives coſts.

Williams and others againſt the attorney general in the office of pleas in *Eaſter* 1754. on a feigned iſſue, upon a point of law directed to be tried at the bar; the parties not having complied with the rules of the court, to make one plan of the premiſſes in queſtion; but inſtead thereof, the ſurvivors for each party having reſpectively made ſeparate plans, and the plaintiffs apprehending that they could not proceed with ſafety, declined opening the cauſe and ſubmitted to a *nonpros*; and in this caſe, the defence being on the behalf of the crown, who neither pays nor receives coſts, the plaintiff paid no coſts.

The king being no party the plaintiff paid the coſts of a nonſuit, though the grant in queſtion was from the crown.

Bagſhaw on demiſe of Sir *George Wynne* againſt the biſhop of *Bangor*, *Hil.* 1737. in the office of pleas, on a like feigned iſſue tried at bar, relative to a grant from the crown, wherein the plaintiff was alſo nonſuited; but here the crown being

being no party, the plaintiff paid coſts, though the grant in queſtion was from the crown.

See other trials at bar *in Scccio.* reported in *Hard.* 315. *Compoſt* againſt—— in debt, on the ſtatute of 2. *Edw.* 6. for tithes of *Eltham* park in *Kent*, where it was held by the whole court that the king is not, by his prerogative, diſcharged of tithes for the antient demeſnes of the crown, and that if he alien the lands ſo diſcharged of tithes, his patentee ſhall pay tithes; and the preſcription is thereby deſtroyed for ever; though the ſame lands ſhould afterwards come into the hands of the king by eſcheat or otherwiſe.

The king is not by his prerogative diſcharged of tithes, but if he alien the lands diſcharged, his patentee ſhall pay tithes, and the preſcription is deſtroyed for ever.

And in *Hard.* 323. *Knight* againſt *Danlar.* In ejectment, upon a demiſe where evidence was admitted of a record loſt, ſuch evidence being ſtrong and cogent, and therein is quoted, Sir *Paul Pindar*'s caſe, in trover of a *fieri facias* being proved upon evidence, the ſame not being to be found upon record.

Evidence admitted where a record was loſt, the like of a fieri facias loſt.

Of judgments by default.

A judgment on *nil dicit* in caſe, treſpaſs or covenant, *&c.* is not a perfect judgment until a writ of inquiry of damages (which will be treated of next) is taken out, and executed upon it, of which notice is to be given in manner herein before-mentioned to the defendant, his clerk in court or ſolicitor, of the time and place of execution, *&c.* But in debt it is a perfect judgment as ſoon as ſigned, *&c.* and there needs no inquiry. 2 *Lil.* 105.

Nil dicit in debt is a perfect judgment, but in no other caſe till a writ of inquiry is executed.

An

Interlocutory judgment on dilatory pleas are in many caſes a reſpondeas ouſter; if either party dies after interlocutory judgment, the action will not abate.

An interlocutory judgment upon a dilatory plea, is in many caſes a *reſpondeas ouſter* to anſwer over; and if the plaintiff or defendant die after interlocutory judgment, the action ſhall not abate. *Stat.* 8 & 9 *W.* 3. *cap.* 10.

On a judgment in debt coſts occaſione detentionis debiti may be taxed as well as coſts of ſuit by the plaintiff's aſſent; he may have a writ of inquiry for that purpoſe if he will.

The conſtant courſe, and practice on a judgment in debt by default or confeſſion is, to tax the coſts *occaſione detentionis debiti*, as well as coſts of ſuit, and this being the aſſent of the party plaintiff, which is always entred on the record, as it is in this very caſe, will conclude the defendant, as appears by all the precedents in the book of entries; but if the plaintiff will not aſſent to it, then he ſhall have a writ of inquiry of damages *occaſione detentionis debiti* if he will; but it is in the election of the plaintiff, and not of the defendant; and if the court by the aſſent of the plaintiff, may tax 20*s.* or any other ſmall ſum for damages *occaſione detentionis debiti illius*; by the ſame reaſon they may tax 20*l.* or any greater ſum for ſuch damages, if they ſee cauſe. 2 *Saund.* 107. *Trin.* 21 *Car.* 2. *Holdip* againſt *Otway*.

On ſigning the judgment interlocutory in caſe, the declaration being under 10 folio's the maſter is paid for the entry of the declaration 2*s.* ſigning judgment 2*s.* rule 1*s.* 10*d.* total 5*s.* 10*d.*

If the judgment be in debt by default, the maſter is paid for the entry of the declaration 2*s.* entring judgment 2*s.* ſigning judgment 2*s.* duty 5*s.* rule for judgment 1*s.* 10*d.* taxing coſts 2*s.* docquet 8*d.* total 15*s* 6*d.*

Of writs of inquiry of damages.

This writ lies on a *Nihil dicit*, *Non ſum informatus*, or a demurrer, but not upon a verdict, and it is executed before the ſheriff, or his deputy, at the time of which both parties have the liberty of being heard before the ſheriff by their counſel, or attorney, and evidence may be given on both ſides: it is the duty of the jury diligently to enquire what damages have been ſuſtained by the plaintiff, and this cannot be without evidence given them; and if where an *Indebitatus aſſumpſit* is brought for 100*l.* for goods ſold, and the defendant lets this go by default; if the plaintiff, at the executing of the writ of inquiry, gives no evidence to the jury of any goods ſold or delivered to the defendant; in this caſe the jury muſt find ſome damages, becauſe the defendant hath confeſſed the action, and admitted that there is damage; but there not being any proved, they ought to find only one penny, or ſome ſuch matter. 2 *Lil. Abr.* 711.

The writ of inquiry is executed before the ſheriff,

and if no evidence given the jury muſt ſtill find damages.

The uſual notice of executing an inquiry is between ten and eleven, or between ten and twelve, two hours diſtance having been determined good notice.

Two hours diſtance determined good notice of executing.

The notice was to execute a writ of inquiry by ten of the clock, and there being no defence the court ſet it aſide for incertainty. *Str.* 1142. *Iſon* againſt *Fowen.*

Notice by ten o'clock uncertain.

The execution of a writ of inquiry before fourteen jurors was held good; for it is but an inqueſt of office, whereon no attaint lies. *Str.* 1159. *Cheſter* againſt *Crawley.* See 2 *Rol. Abr.* 673, 674.

Executed before 14 jurors good.

Upon

Jury adjourned to a future day held good.

Upon executing a writ of inquiry before the chief juſtice, the plaintiff could not prove the quantity of goods, for which the action was brought; for want of a ſervant who was abſent through an apprehenſion they ſhould not want his teſtimony; and upon conſideration the chief juſtice held that he might adjourn it to the next ſittings, and accordingly the jury were adjourned over, the plaintiff ſubmitting to pay coſts; the chief juſtice compared it to the caſe of a coroner's inqueſt, or a commiſſion of lunacy, where the jury are adjourned over ſeveral times, it being but an inqueſt of office. *Str.* 853. *Coleman* againſt *Mawbey*.

Inquiry ordered to be executed before the chief baron.

Trin. 1750. *in Scio.* it was ordered, That an inquiry ſhould be executed before the chief baron, and the defendant to take ſhort notice. *Bennet* and another againſt the duke of *Bolton*.

The like order obtained.

See the like rule in *Froſt* againſt *Dawes*, the particular whereof is hereafter ſet forth under the title of *Error* in *Parliament*.

Inquiſition but no final judgment, the inquiſition being loſt a new writ was ordered, and inquiſition taken from notes.

In *Bean* againſt *Elton*, a writ of inquiry was executed in *Trin.* 1728. and coſts taxed upon it but no final judgment entred up; and now there being occaſion to prove the debt in chancery, the writ of inquiry could not be found: a rule was made for a new writ of inquiry, and inquiſition according to the ſheriff's note, and that the maſter ſhould indorſe the coſts which by the commitment book appeared to have been taxed. *Str.* 1077.

Note; No cauſe was thereon againſt this rule.

Plaintiff ſurprized with a defence, inquiſition ſet aſide on paying coſts.

Upon executing an inquiry the plaintiff was ſurprized with a defence, and not prepared to prove his whole demand, and the court ſet it aſide

aſide on payment of coſts, the damages being too ſmall. *Str.* 515. *Hill* againſt *Stone*.

It was held upon debate that the want of a writ of inquiry is aided by the ſtatute of *Jeofails*; though it was inſiſted to be ſuch a fault as could not happen in the caſe of a verdict. *Str.* 878. *Mallory* againſt *Jennings*.

Want of the writ aided by the ſtatute of jeofails.

The court will give coſts for not executing a writ of inquiry according to notice, and for not countermanding according to the rules.

The court will give coſts for not executing according to notice, or not countermanding in time.

In *Vernon* againſt *Cholmondeley October* 26th 1722. *per Curiam in Sccio.* The jury may upon a writ of inquiry of damages give intereſt upon a promiſſory note, bill of exchange, and money lent; and *per Montague* chief baron, upon an *indebitatus aſſumpſit* for goods ſold and delivered; but *Page*, *Price* and *Gilbert* barons, thought it could not be upon an *indebitatus aſſumpſit* for goods ſold, though in the other caſes they were of opinion it might.

The jury may give intereſt upon a writ of inquiry.

This was upon a motion to ſet aſide a writ of inquiry, for that in an *indebitatus aſſumpſit* for goods ſold and delivered, the jury had given intereſt for the money. *Bunb.* 119.

Intereſt on notes by the ſtatute.

The word damages in the ſtatute concerning promiſſory notes has been extended to intereſt; which will be given upon the inquiſition; but where judgment is in debt by default, the court gives the damages without putting the party to the trouble of a writ of inquiry, unleſs the party requires it *occaſione detentionis debiti*, and then he may have it, as in the caſe of *Holdip* againſt *Otway* before mentioned under the title of *judgment by default*.

In judgment in debt the court give damages without a writ of inquiry.

Feme marries after interlocutory judgment, and before writ of inquiry; the court will not ſet it aſide.

In *Chubbs* againſt *Billington*, 6 *June* 1730. The plaintiff (being a woman) married after the interlocutory judgment, and before the executing the writ of inquiry; and it was now moved to ſet aſide the writ of inquiry, and the inquiſition thereon taken: but *per totam curiam* it was refuſed, and the defendant was left to his *audita querela*. *Bunb.* 283.

The like determination.

In Lord *Sutherland & ux'* againſt *April* 26, 1730. The plaintiff's wife obtained an interlocutory judgment againſt the defendant, and before final judgment married; and after the final judgment the huſband and wife brought a *ſcire facias* thereupon for the defendant to ſhew cauſe *quare executio non, &c.* And now the defendant moved to ſet this judgment aſide; but the court refuſed to do it upon motion and put him to his *audita querela*. *Nota*; This being an action *in cur' ſcaccar'* a writ of error lies only to the exchequer chamber, where they have no juriſdiction of errors in fact. *Bunb.* 282.

Exchequer chamber has no juriſdiction of errors in fact.

Of witneſſes.

Witneſs ſerved with ſubpœna, and charges tendered, not attending, court will grant attachment againſt him.

If a witneſs is ſerved with a *ſubpœna*, and his charges are tendered him, and he does not attend, the court will grant an attachment againſt him. *Str.* 810. *Ld. Raym.* 1528.

Witneſſes ought to have a reaſonable time given them.

The defendant ſummoned one *Turnor*, a witneſs to attend the trial of the cauſe; who, on ſervice of the *ſubpœna*, ſaid, he would not attend, but run the hazard of forfeiting the 100*l.* penalty; and, on affidavit of this, *Ketelby* moved for an attachment, that they might not be put

to

to bring their action on the ſtatute, ſaying, they do it every day in chancery, even for not attending a maſter upon his ſummons; and in the principal caſe the court made a rule to ſhew cauſe; and this term the rule for an attachment *niſi* againſt the witneſs was diſcharged, it appearing, that the *ſubpœna* was not ſerved till two in the afternoon in the city, to attend the ſittings that day in *Middleſex*, which the court ſaid was too ſhort notice; and that witneſſes ought to have a reaſonable time to put their own affairs in ſuch order, that their attendance upon the court may be as little prejudice to themſelves as poſſible. *Hil.* 8 *Geo.* 1. *Hamond* againſt *Steward*, *Str.* 510.

Service of the ſubpœna muſt be perſonal.

An attachment was moved for againſt a witneſs, for not attending, being *ſubpœnaed*, and having a ſhilling left. But it appearing not to be perſonal ſervice, the court held it not ſufficient to warrant a proceeding criminally againſt him; whether it would do in an action they would not declare.

If a witneſs comes far, reaſonable charges ought to be tendered him.

It was alſo ſaid, that though a ſhilling is what is conſtantly given with a *ſubpœna*, yet if the witneſs comes far, there ought to be a tender of reaſonable charges. *Mich.* 10 *Geo.* 2. *Smalt* and *Windmill*, *Str.* 1054.

Two guineas too ſmall a tender for coming from Cheſter to Guildhall.

A witneſs was ſerved with a *ſubpœna* at *Cheſter*, to attend at the ſittings at *Guildhall*, and two guineas were tendered by the perſon who ſerved it; and being objected to, as too little, he declared he would give no more. The witneſs not coming up, an attachment was moved for; and on ſhewing cauſe diſcharged; the court ſaying, it was too little, and that the witneſs is not obliged to truſt to the court's allowing him more when he comes to the book; for perhaps the party may not call him; and then it

The witneſs not obliged to truſt to the court's allowance, as he may not be called.

it may be difficult for him to get home again; that this way of puniſhing as for a contempt was new, and practiſed only in this court, (*K. B.*) the Common Pleas not doing it to this day, but leaving the party to his remedy on the ſtatute of 5 *Eliz. cap.* 9. and therefore they would not enter into any nice calculation of the expence, but confined their inquiry to the queſtion, whether the non-attendance was through obſtinacy or not. *Str.* 1150. *Chapman* againſt *Pointon*, *Eaſter* 14 *Geo.* 2.

Attachment refuſed againſt a perſon ſubpœnaed as a witneſs, who went away before he was examined.

Pugh againſt *Noſſington*, *Hil.* 1723. *in Sccio. R.* an officer of the navy-office, was ſerved with a *ſubpœna* to attend as a witneſs on the behalf of the plaintiff; he attended two hours, and then went away before he was examined, by reaſon whereof the plaintiff was nonſuited; wherefore it was now moved, that an attachment of contempt might go againſt him; but this was oppoſed, becauſe there is a proper remedy given in this caſe by the ſtatute 5 *Eliz. cap.* 9. and *per curiam* the motion was denied. *Bunb.* 142.

But afterwards an attachment was granted in the like caſe.

But in the caſe of *Troubleſome* againſt *Edwards*, *May* 8, 1729. This court in the like caſe granted an attachment, becauſe an action was ſo difficult and hazardous. *Bunb.* 142.

As to matters of evidence, if the ſollicitor is deſirous of inquiring into the determinations of the court of exchequer, he may find them reported.

In ſome caſes a record may be proved by evidence. Fieri facias proved in evidence,

Knight againſt *Danler*, *Hard.* 323. In ejectment, tried at bar on a demiſe made by *D. Griffith*, who was preſented by a popiſh recuſant convict; the record of his conviction being ſuppoſed upon evidence to be burnt, it was held by chief baron *Hale*, and the whole court, that, in ſuch a caſe as this, a record may be proved

proved by evidence; becauſe the conviction here is not the direct matter in iſſue, but is only an inducement to it; and herein Sir *Paul Pindar*'s caſe was quoted, where a *fieri facias* was admitted to be proved in evidence, not being to be found upon record.

Fieri facias proved in evidence, being loſt.

In *Olive* againſt *Gwynn in Sccio.* 2 *Sid.* 145. A recovery under the ſeal of the great ſeſſions in *Wales* was allowed to be given in evidence.

Recovery in Wales proved in evidence.

——— againſt *Brown & al' in Sccio. Hard.* 315. In ejectment, it was held upon evidence *per curiam*, by advice of all the other judges, whom one of the barons was ſent to conſult, (*Quod nota*); That if one witneſs be examined for the defendant, *de bene eſſe*, to preſerve his teſtimony, upon a bill preferred, and before anſwer, and upon an order of court for his examination, made upon hearing of counſel on both ſides; and if after anſwer the witneſs die before he be examined again, the anſwer coming in on the 28th of *November*, and the witneſs's death happening on the 18th of *December* following, and he being ſick all the mean time, ſo that he could not go to be examined; that notwithſtanding all this, the examination of ſuch a witneſs ſhould not be read in evidence; becauſe it was taken before iſſue joined in the cauſe, and he might have been examined after; and the defendant did not appear to be in contempt.

Witneſs examined in evidence, and died, his examination refuſed.

In *Watt*'s caſe *in Sccio*, *Hard.* 331. It was held that if witneſſes were examined *de bene eſſe* before anſwer upon a contempt, ſuch depoſitions cannot be made uſe of in any other court, but the court only where they were taken. The reaſon ſeems to be, becauſe there was no iſſue joined, ſo as there could be a legal examination; and they were only taken to be read in

Witneſſes examined de bene eſſe before anſwer on a contempt, cannot be uſed in any other court.

the court in which they were taken upon a contempt to that particular court.

Of ſpecial verdicts, and other verdicts, ſubject to the opinion of the court on caſes reſerved.

Special verdict, what.

A ſpecial verdict is where the jury find the matter at large, according to the evidence given, that ſuch a thing is done by the defendant, and declaring the courſe of the fact, as in their opinions it is proved, pray the judgment of the court as to what the law is in ſuch a caſe. 1 *Inſt.* 227.

The counſel draw and ſign it, and give it the jury,

Where the court directs the jury to find a ſpecial verdict, one of the counſel on each ſide agree upon notes for it, and draw them up, and ſet their hands to them; and then they are to be delivered to the jury in convenient time, or the court will take a general verdict: if at the prayer of the plaintiff or defendant a ſpecial verdict is ordered to be found, the party praying it is to proſecute the ſpecial verdict, that the matter in law may be determined; and if either party delay to join in drawing it up, and pay his part of the charges, or if the counſel on either ſide refuſe to ſubſcribe the ſpecial verdict, the party deſiring it ſhall draw it up, and enter it *ex parte*. 2 *Lill. Abr.* 645, 653.

if prayed by plaintiff or defendant, and the other party will not ſubſcribe it, it may be done ex parte.

If drawn contrary to the notes, the court on motion will rectify it.

Where the parties diſagree, or the ſpecial verdict is drawn contrary to the notes agreed upon, the court on motion will rectify it, and the court may amend a ſpecial verdict, to bring the ſpecial matter in queſtion: though if a matter of fact be left out in the notes of the ſpecial verdict drawn by counſel, that cannot be amended afterwards. 2 *Lill. Abr.* 646.

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A ſpecial verdict, though agreed to by the counſel, is not a ſpecial verdict till allowed by the court. 2 *Lill.* 646.

It is no ſpecial verdict till allowed by the court.

Where doubts ariſe in matters of law, a general verdict is given ſubject to the opinion of the court on the matter of law; the caſe is drawn up by the aſſociate under the direction of the judge of aſſize, and is ſettled and ſigned by the counſel for both parties, and in caſe they differ, the caſe is referred to the judges minutes, before whom the matter is adjuſted and determined; whereupon a day is fixed by the court for the argument, and copies of the pleadings and caſe are left with each of the four barons (two by each of the parties attornies) at leaſt two days before the day of argument, on which day the aſſociate attends with the *poſtea* in court; and the caſe being argued by the counſel, the court on delivering their opinion direct the aſſociate to which of the parties he ſhall deliver the *poſtea*, that the judgment may be be entred up accordingly.

Where matters of law in queſtion, the verdict is taken ſubject thereto, and a caſe drawn for the opinion of the court thereupon.

In all theſe ſpecial matters the attornies or clerks in court charge for drawing 8*d. per folio*, and for copying 4*d. per folio*, out of which the ſolicitor has his allowance.

By the old rules it is ordered, "That in "finding ſpecial verdicts where the facts are "ſingle and not complicated, and no ſpecial "concluſion, the counſel if required, are to "ſubſcribe the points in queſtion, and to agree "to amend omiſſions and miſtakes in the "meſne conveyances according to the truth, to "bring the point in queſtion in judgment."

In finding ſpecial verdicts, the point in queſtion muſt be ſet forth without unneceſſary concluſions.

"That unneceſſary finding of deeds *in hæc verba* where the queſtion reſts not upon them, but "are only derivations of the title, to be ſpared,

No unneceſſary finding of deeds.

" and found ſhortly according to the ſubſtance " they bear in reference to the deed, as feoff- " ment, leaſe, grant, will, *&c.*"

There are many determinations reported on ſpecial verdicts in the exchequer, among which are as follows:

Whether judgment in an information of intruſion pro rege, bind a ſtranger from entring.

Friend againſt the Duke of *Richmond*, *Hard.* 460. Upon a ſpecial verdict in ejectment, where the queſtion was, whether or no a judgment in an information of intruſion *pro rege* binds a ſtranger, ſo that he cannot enter? and it was determined that it cannot, and that the judgment includes an *amoveas manus* only againſt ſuch as may be lawfully amoved; and that it is not in the nature of a ſeiſin or poſſeſſion, but only *quod pars committatur & capiatur pro fine*; and upon that an injunction iſſues for the poſſeſſion againſt the party himſelf, and all claiming under him.

Upon a compoſition for very antient tithes.

Sir *William Ingolſby*, Bart. againſt *Wyvill* and *Ullithons*, *Hard.* 381. A great caſe upon a compoſition for tithes of abbey lands exempted from tithes by the council of *Lateran*, which concerned the dean and chapter of *Ripon*, and was made between the years 1216 and 1261. with the arguments and opinions reported at large thereupon.

Ejectment of lands in ſeveral pariſhes; the copulative (Et) to the two laſt names, ſhall refer to that which is real. Whether St. Peter and St. Paul be one or two pariſhes.

Igleton againſt *Wakeman* in ejectment, *Hard.* 336. The declaration was of ſeveral meſſuages in the ſeveral pariſhes of *St. Michael*, *St. James*, *St. Peter*, and *St. Paul*; but there was no pariſh of *St. Peter*, nor none of *St. Paul*, and it was held clearly *per curiam*, that the copulative (*Et*) ſhould be referred to that which is real and has an exiſtence, and make them but one pariſh, and judgment *niſi* was given accordingly.

King

King againſt Sir *Edward Lake*, *Hard.* 470. In caſe for printing and publiſhing a falſe and malicious libel againſt the plaintiff, the ſpecial verdict finds words omitted in the declaration. *Per Hale* chief baron: There is no material variance betwixt the declaration and the ſpecial verdict; and although ſuch general words ſpoken once, without writing or publiſhing them, would not be actionable; yet here they being writ and publiſhed, which contains more malice, than if they had but been once ſpoken, they are actionable. And the court being all of that opinion, judgment was given *pro quer'*, *niſi cauſa*, *&c.*

Printing and publiſhing a libel contains more malice than ſpeaking it.

Vanderbergh and *Blake*, *Hard.* 194. In caſe upon a ſeizure under pretence of goods condemned for not paying cuſtom, and all the matter was found on the ſpecial verdict, except that the jury found the inquiſition upon the ſeizure *in hæc verba*, which the defendant had exhibited on behalf of the protector only, and that the defendant falſly and maliciouſly had exhibited it. This argument is ſet forth at large by the reporter, and judgment was given for the defendant *quod querentes nihil capiant per billam.*

Finding more by the verdict than is contained in the declaration.

Same againſt *Same*, *Hard.* 191. This ſpecial verdict was depending before the act of general pardon, and continued upon *curia adviſare vult hucuſque*; the defendant now would have pleaded by way of ſuggeſtion the ſaid general pardon, not having had a day to plead it mean betwixt the ſpecial verdict and the judgment; but he was not allowed by the court, becauſe continuances are made and entred after ſpecial verdicts, and days thereupon are given to the parties *ad audiendum judicium*; but it is otherwiſe in caſe of a general verdict, for there the day of

Special verdict before the act of general pardon, too late to plead it after a continuance per cur' adviſare vult.

Niſi prius, and the day in Bank is all one, and becauſe this plea was tendered after the firſt continuance, it was not allowed.

A ſpecial verdict after the act of general pardon, the general pardon being after iſſue joined, ought to be ſpecially pleaded.

Dry againſt *Willis*, *Hard.* 217. In trover and converſion, the jury gave a ſpecial verdict after the act of general pardon; and found, that the defendant by warrant from a juſtice of peace, upon a decree for tithes, by virtue of an ordinance made in the late times, (but the ordinance was not found), took the goods mentioned in the declaration; and they found the act of general pardon: and it was now moved on behalf of the plaintiff, that the ordinance not being found, no notice could be taken of it. And *per Hale* chief baron, if the ordinance had been found, yet this caſe would not have come within the act of general pardon, without ſpecial pleading, for the act was made after iſſue joined; and it extends only to actions brought ſince the act in caſe of pleading the general iſſue, and giving the act in evidence.

Whether the farmers of the cuſtoms were intituled to the poundage of an additional duty.

Papilion againſt *Harriſon*, knt. *& al'*. *Hard.* 349. In caſe againſt the farmers of the cuſtoms, for taking more than they ought; and the queſtion was, whether or no 5*l. per Cent.* ſhould be allowed out of an additional duty or not; which was given for plaintiffs. This was determined *ſeriatim*; ſee the report.

Whether an office was grantable for years or not.

Veale againſt *Priour*, *Hard.* 351. In caſe for diſturbing the plaintiff in his office, and taking the profits thereof: upon a ſpecial verdict found, the queſtion was, whether it was an office grantable for years or not? on which judgment was given for the defendant; this is reported very largely.

Dennis

Dennis againſt *Loving*, *Hard.* 424. In ejectment for a meſſuage in *Weſtminſter*; upon a ſpecial verdict, the caſe was thus; the office of one of the tellers in the exchequer was granted in reverſion by the late King *Charles* to one *Squibb*, *habendum* to him and his aſſigns during his life, and with a proviſo that the grantee ſhould not intermeddle in the ſaid office before he had given ſecurity with ſureties to the Lord Treaſurer. The grantee before admittance or ſecurity given, granted the office over in reverſion to another; then the office becomes void, and the king grants it to the defendant, who entred into the houſe belonging to it, and the aſſignee entred upon him and aſſigned to the plaintiff. This was argued by ſerjeant *Glynn* for plaintiff, and the ſolicitor general, Sir *Heneage Finch*, for the defendant; and afterwards in *Eaſter* 19 *Car.* 2. the defendant procured a writ *de rege inconſulto*, directed to this court to ſurceaſe proceeding, after the caſe had been debated on both ſides, and that the court were ready to deliver their judgment, which writ was grounded upon an inquiſition, and a ſeizure of the office into the king's hands for a forfeiture, and a plea to the inquiſition, and a judgment thereupon in chancery for the king. Which inquiſition was taken after the ſpecial verdict, and the arguments in the caſe; and the court allowed of the writ *de bene eſſe*; and gave a day to ſhew cauſe, *&c.* It was thereupon again argued, whether this writ ſhould be allowed, or not; and whether the court might proceed: Mr. *Hardres* for the plaintiff, and Mr. *Stevens*, and the attorney and ſolicitor general for the defendant, and the writ being

Whether an office was aſſignable before ſecurity given, which was granted with that condition.

Whether a writ de rege inconſulto ſhould ſurceaſe the proceedings here or not.

amended was ſent and allowed, and the matter adjourned. See the argument at large by the reporter.

Aprice againſt *Hayes*, *Hard.* 498. In ejectment upon a queſtion when a leaſe was to commence.

Caſes on matters of title.

Jenkins againſt Lady *Kemiſhe*, *Hard.* 395. In ejectment tried at bar upon theſe queſtions, whether the powers reſerved in a ſettlement were well executed by making a mortgage; and admitting the power not well executed, whether ſuch mortgage ſhall not ſtand good againſt the eſtate-tail in the caſe ſet forth.

Focus againſt *Saliſbury*, *Hard.* 400. In ejectment for lands in *Wales*; the queſtions are, whether a leaſe of 500 years is barred by a fine and five years non-claim; and whether a claim of part of the lands be well made, after the death of the leſſor, and in another county, and in lands not compriſed in the fine. This cauſe was adjourned, but the arguments and opinions of the court are ſet forth by the reporter.

Edwards againſt *Slater*, *Hard.* 410. In ejectment upon the following points; whether by a bargain and ſale the tenant for life had departed with all his eſtate; and whether by a reconveyance to the tenant for life in fee, he is now in of a new eſtate; and whether the powers were repugnant, unſeaſonable, inconſiſtent, and contrary to law, that the tenant for life ſhould have power to make a jointure, and a leaſe for 31 years, to commence after his death. This caſe was determined for the defendant, and is reported very fully.

of

Of the arreſt of judgment.

To move in arreſt of judgment is for a rule to ſhew cauſe why judgment ſhould not be ſtaid notwithſtanding the verdict given; for in many caſes though there be a verdict no judgment can be had.

Motion in arreſt of judgment, what.

Where there is a material defect in pleading, or where perſons are miſnamed, or where more is given and found by the verdict than is laid in the declaration, or where the declaration doth not lay the thing with certainty, or ſuch like, are cauſes for an arreſt of judgment as they appear upon the face of the record.

Cauſes for arreſt of judgment.

Four days are allowed to move in arreſt of judgment; and the defendant hath all the term wherein the verdict was given to ſpeak any thing to arreſt it, if the plaintiff hath not given his four days rule and ſigned his judgment; after which the defendant is put to his writ of error. 2 *Lilly* 93. The motion may be made any time before judgment ſigned. *Str.* 845.

Motion for an arreſt of judgment may be made any time before judgment ſigned.

On motion in arreſt of judgment, if the court be divided two judges againſt two, the plaintiff muſt have his judgment, unleſs a rule be made at firſt to ſtay all proceedings until the court otherwiſe order. 2 *Lil. Abr.* 118.

If the court be divided two and two the plaintiff muſt have his judgment, unleſs the proceedings were firſt ſtaid by rule.

There are ſeveral determinations in the court of exchequer in arreſt of judgment reported, which may be uſeful to the ſolicitors; namely,

Caſes reported in arreſt of judgment, viz.

Ernly,

That the promiſe is not ſufficiently averred in the declaration by recital, but it was held ſufficient.

Ernly eſquire againſt lord *Falkland* and *Doddington*, eſq; *in Sccio.* concerning an horſe-race, after a verdict for the plaintiff, it was moved in arreſt of judgment, that the promiſe was not ſufficiently averred, but laid only by way of recital, *viz.* whereas the defendants promiſed, *&c.* but judgment was given for the plaintiff. *Hard.* 1. *Paſ.* 39 *Eliz. Mathews* and *Crane*'s caſe, upon a writ of error in the exchequer chamber was cited in point.

That the averment of death with the words poſtea ſcilt. was held good tho' the date was bad.

Jones againſt *Williams.* In debt for rent *in Sccio.* upon a leaſe for 99 years, if three lives ſhould ſo long live, rendring rent which the declaration ſet forth and that afterwards the leſſor deviſed the reverſion to the plaintiff, and *poſtea ſcilt* on the 6th day of *Nov. anno* 13 *Car.* died, and after a verdict for the plaintiff, the death of the leſſor was (in arreſt of judgment) alledged to have happened before the leaſe made, *et adjorn.* Hard. 3. who notes, that this caſe has often been adjudged in the upper bench in his time, in ejectment, *faux impriſonment, trover et ſimilibus.*

A promiſe to pay the debt of a third perſon if plaintiff would forbear to ſue him and plaintiff averred he had forborne hitherto and the averment held good.

Barneburſt againſt *Cabbot*, In caſe upon a promiſe of the defendant to pay the plaintiff a debt owing by a third perſon, if he would forbear to ſue that perſon; the plaintiff averred forbearance hitherto, and after a verdict for the plaintiff, the motion in arreſt of judgment was, becauſe the plaintiff had not alledged in particular, how long he had forborne, that ſo it might appear to the court, whether he had forborne a reaſonable time or not; but the chief baron gave judgment for the plaintiff, that the conſideration was good, *Bane*'s caſe, 9 *Rep.* and the averment ſufficient; for that it appears upon the record how long the forbearance was,

and therefore no particular averment neceſſary. *Wymarke*'s caſe, 5 *Rep. Hard.* 5.

That the words perjured whore were actionable.

Wales and wife againſt *Norton and wife*, for words, and the motion in arreſt of judgment was for that the words perjured whore, *&c.* were not actionable, but the chief baron ſaid, that here were ſeveral and diſtinct cauſes, and the words perjured whore are in a diſtinct clauſe by themſelves, without reference to, or depenance on the reſt, and judgment was given for the plaintiff. *Hard.* 7.

That the words cozener or cheater without a colloquium of the trade not actionable.

Wake againſt *Chapman and wife*, for words; upon a verdict for the plaintiff, it was argued in arreſt of judgment, that to ſay a man is a cozener or a cheater, without a *colloquium* of his trade or profeſſion, is not actionable, 15 *Car. B. R. Paſ.* 7 *Car. B. C. Alexton* and *Moor. Trin.* 7 *Car. B. R. Gee*'s caſe; judgment was hereupon arreſted *quouſque*, *&c.* Hard. 18, *Harris* executor againſt *Ferrand*, in caſe on promiſes to which the pleadings were ſpecial, and defendant rejoined, that the teſtator requeſted him to pay the money mentioned in the pleadings to *Stretton*, as before he had alledged, and iſſue was thereupon joined.

The jury found on this iſſue, that the teſtator did not require the defendant to pay, as plaintiff in his replication had alledged, and aſſeſs 80 *l.* damages and 20 *s.* coſts.

In caſe on promiſes four exceptions were taken in arreſt of judgment, all which were over ruled.

The motion for defendant in arreſt of judgment was, firſt, to the teſtator's requeſt laid in the declaration; 2dly, to the iſſue being taken on the traverſe; 3dly, to the verdict being repugnant to the declaration; and 4thly, to the want of notice to the defendant, of the payment to *Stretton*, becauſe he is a ſtranger to the whole matter; *vide Hob. Rep.* 51, 68. and after two arguments

guments ſet forth by the reporter, the court were of opinion, that *licet ſæpius requiſit.* was no material part of the declaration, and therefore no contradiction in the replication or verdict, that the words, as the defendant has alledged, are but tantamount to *modo et forma*; that if the day be part of the iſſue, yet that an immaterial iſſue is aided after verdict, if it be good in form; that notice needs not, becauſe the matter does not reſt in the conuſance of the plaintiff more than of the defendant; and judgment was given *pro quer'*. Hard. 36.

In treſpaſs for laying filth, without naming the place where and not declaring in caſe.

Preſton againſt *Mercer* in treſpaſs for laying filth ſo near plaintiff's walls that they became rotten, *&c.* the defendant's motion in arreſt of judgment was, that the place where was not alledged, and that the action ought to be in caſe, but judgment was given for the plaintiff after great wavering in opinion, and arguing *pro & con'*. Hard. 60.

A promiſe of a third perſon to a fourth perſon for payment of a debt due on judgment from A. to B. held a good conſideration.

Reynolds againſt *Proſſer* in caſe, plaintiff declares, that *John* lord *Abergavenny* by his writing obligatory became bound to one *Smithſon* as therein mentioned, and that *Smithſon* had judgment thereon, and afterwards appointed plaintiff to receive the principal and intereſt, or proſecute the judgment in *Smithſon*'s name; that plaintiff thereupon intending to ſue forth execution accordingly, defendant, in conſideration of his forbearance till the end of *Michaelmas* term then next, promiſed to pay plaintiff at the end thereof, and plaintiff giving credit to his promiſe hath hitherto forborne to proſecute the ſaid lord, and that there was due 400 *l.* of which defendant had notice, and hath not paid, but refuſes to pay. In arreſt of judgment on this verdict for the plaintiff, it was

inſiſted

inſiſted on the part of the defendant, that this was no good conſideration, but the court was of opinion, that the conſideration was ſufficient, and the plaintiff had his judgment. *Hard.* 71.

Gibbons againſt *Prewd* in caſe on a ſpecial agreement; it was moved in arreſt of judgment that the plaintiff muſt perform her part of the agreement firſt, otherwiſe the defendant cannot perform his. But the conſideration is no other than the reciprocal promiſe of one to the other, which is executory, and upon which the parties have mutual remedies; and it is a general rule, that when the defendant has a remedy for the conſideration of a promiſe, that conſideration needs not be averred to be performed, which was this caſe, and afterwards judgment was given *pro quer'*. Hard. 103.

On a ſpecial agreement plaintiff muſt firſt perform his part, or defendant cannot perform his.

Ernly againſt lord *Falkland* in caſe on promiſes; the plaintiff declared, that it was agreed betwixt the plaintiff and the defendant, that their horſes ſhould run a race, and the winner to have of the other 200 *l.* with ſome other particulars of the agreement; and that whereas the plaintiff had promiſed to perform on his part, the defendant had promiſed to perform on his. After a verdict for the plaintiff, the conſideration was admitted upon a motion in arreſt of judgment to be good, being grounded upon ſuch a reciprocal promiſe. But the only queſtion was, whether it was certainly enough laid or no? for the words were, Whereas the plaintiff promiſed, *&c.* but that too was adjudged to be good and ſufficiently certain. *Vide* 48 *Ed.* 3. 3. *Raſepoole*'s caſe, and *Mich.* 24 *Car. Reg. Bragg* verſus *Nightingale*, *Entr. Trin.* 24 *Car. Reg.* 601. and *Brockeſby*'s caſe, *Paſ.* 1649. *B. R. Entr. Mich. Car. Reg.* 73. *Hard.* 103.

Whether the reciprocal promiſes concerning a horſe-race are well laid.

That letters patent cannot be converted, and that their date ſhould be ſpecified, and that plaintiff was poſſeſſed thereof ut de bonis propriis.

Jones againſt *Winckworth*: In trover and converſion for letters patent, after a verdict for the plaintiff, it was moved in arreſt of judgment; firſt, that a record cannot be converted; 2dly, That the date of the letters patent is not ſpecified. 3dly, That the plaintiff does not alledge he was poſſeſſed of them *ut de bonis propriis*; *ſed non allocatur* after a verdict: And the declaration does mention that the defendant knowing them to appertain to the plaintiff converted them, which implies as much, and judgment *niſi*, &c. *Hard.* 111.

Whether the words forſworn raſcally fellow, &c. are actionable.

Brumrig againſt *Hanger* and wife: In caſe for words, the plaintiff declared that the huſband was ſued in the ſheriff's court for 36*s.* and the plaintiff produced as a witneſs againſt him, and that a verdict paſſed againſt him; and that the wife having a colloquium concerning that trial, ſaid of and to the plaintiff the ſame day, thou art a forſworn raſcally fellow, and I will prove that thou tookeſt a falſe oath againſt my huſband and me this day. After a verdict for the plaintiff, it was moved in arreſt of judgment that the words were not actionable: 1. Becauſe it doth not appear that it was in a court of record; and 2dly, Becauſe the words have reference to a particular ſuit, in which the wife was not a party; and it was alledged that the defendant's huſband was dead *puis le darreine continuance*, and that the ſuit ought to abate.

Death of the huſband does not abate the ſuit for words ſpoke by the wife.

The court doubted upon the matter of abatement; but it was afterwards held *per cur'*, that he words were actionable with ſuch an inducement,

ment, and that the ſuit is not abated by the huſband's death; the wife being the only *tort feaſor*, otherwiſe if the wife had died; as in *Cowley*'s caſes, *Hob. Rep.* and judgment was given accordingly. *Hard.* 151.

Whether the words You and your crew brought the late king to death, are actionable.

Lowes, Eſq; againſt *Roberts* in caſe for words, You and your crew brought the late king to death: The motion for the defendant in arreſt of judgment was, that theſe words are not actionable. But *per curiam*, the words found in ſcandal; and in common acceptation and conſtruction they amount to this, that the plaintiff put the king to death, or had a hand in his death. *Hard.* 203.

Action againſt executor for a promiſe made by teſtator to pay at his death, whether neceſſary to aver nonpayment in his life-time,

Greenway againſt *Hornblow*. Action upon the caſe brought againſt an executor, upon a promiſe made by the teſtator to pay 20*l.* at his death. The motion in arreſt of judgment was, that the plaintiff had not averred, that it was not paid in teſtator's life-time; but the court held it to be well enough, becauſe the money was not payable in the teſtator's life-time, as if money be payable at *Michaelmas*, the plaintiff needs not aver that it was not paid before, but it is ſufficient to aſſign the breach as the contract directs. And the chief baron ſaid it had been adjudged, that if two perſons be to pay money, and one of them die, in an action brought againſt the ſurvivor, 'tis ſufficient to alledge that the ſurvivor has not paid it, and that it is aided after verdict, and that after verdict it ſhall not be preſumed that the other had paid it; and judgment was given *pro quer' niſi*, &c. *Hard.* 221.

if two perſons be to pay, and one die before pay day, ſufficient to alledge that the ſurvivors has not paid it.

Moor

In treſpaſs quare clauſum fregit any part of what defendant makes his title is traverſable.

Moor againſt *Pudſey* in treſpaſs, *quare clauſum fregit*, the defendant pleads that Sir *Charles Smith* was ſeiſed in fee of the land, *&c.* and that it was extended upon an outlawry, and that he the defendant by the ſheriff's commands entred upon a *levari facias*, *&c.* and ſo juſtifies. The plaintiff in his replication, proteſting that Sir *Charles* was not ſeiſed, ſays that the maſter and fellows of *King's College* in *Cambridge* were ſeiſed in fee, and that before the outlawry, and the inquiſition thereupon, they demiſed to the plaintiff; *abſque hoc*, that the cloſe in which, *&c.* was contained in the inquiſition, and iſſue being taken thereupon, and a verdict for the plaintiff. It was moved in arreſt of judgment, that the traverſe was naught, and that the ſeiſin in fee, and not the being compriſed in the inquiſition, ought to have been traverſed. But *per Curiam*, the traverſe is well taken; for any part of what the defendant makes his title, is traverſable; as if in treſpaſs, the defendant alledges a *ſeiſin* in fee in *J. S.* and a demiſe to himſelf, the plaintiff may traverſe either the ſeiſin in fee, or the demiſe at his election; ſo here. Beſides in this caſe, the ſeiſin in fee is not material, becauſe the defendant juſtifies by command from the ſheriff; who had authority by virtue of the extent and *levari facias*, though Sir *Charles* was never ſeiſed. *Et judic' intrat' pro quer'. Hard.* 316.

Trover and converſion for 3 executors of a bond loſt in teſtator's life-time, but the converſion laid ſince; two of the plaintiffs were ſevered, and nonproſſed the third takes iſſues on non cul. ſummons and ſeverance in this caſe lay not, and on motion in arreſt of judgment the judgment was arreſted.

Manley & al' againſt *Lovell.* In trover and converſion as executors, againſt the defendant for an obligation, and declare that it was loſt in the teſtator's life-time, but lay the converſion

ſion ſince his death. Two of the plaintiffs were ſever'd, and *nonpros* entred as to them; to the third the defendant pleaded *non cul'*, which was found againſt him; and 500*l.* damages given; whereupon he moved in arreſt of judgment upon the ſeverance; and held by *Hale* chief baron, and the whole court, that ſummons and ſeverance lies not in this caſe; becauſe the converſion, which is the moſt material part of the declaration, was in the executors own time. So that upon the matter, the action is grounded on their own poſſeſſion, as treſpaſs of their own poſſeſſion; in which caſe, ſummons and ſeverance does not lie, and conſequntly the nonſuit of one, is the nonſuit of all; and all the proceedings after are to no purpoſe. *Per Hale* chief baron, there are two ſorts of ſeverances; one, when a plaintiff will not appear, there he ſhall be ſummoned and ſevered: the other, when all appear, but ſome one or more will not proſecute, there he or they ſhall be ſevered by order of court; and judgment in this caſe was arreſted. *Hard.* 317.

Two ſorts of ſeverances, one where the plaintiff will not appear, the other when all appear but part will not proſecute.

Anonymous in debt on bond conditioned for performance of covenants contained in a leaſe for a year, defendant pleaded performance of covenants; and plaintiff replied that defendant did not pay the rent reſerved, *&c.* according to the form of the condition of the obligation; the rejoinder alledged an entry by the plaintiff, before the rent, and that he kept the poſſeſſion till the rent day was paſſed; upon which, iſſue being taken, it was found for the plaintiff. The defendant moved in arreſt of judgment upon a fact, *viz.* that the plaintiff

Debt on bond for performance of covenants and replication of nonpayment of rent according to the form of the condition, without there being any ſuch condition in the bond held good enough after verdict, defendant having rejoined that ſuch a rent was in arrear.

plaintiff ſays the defendant paid not his rent according to the form, *&c.* of the condition of the obligation, whereas there is no mention of any payment of rent in the condition of the bond, but in the leaſe only; *ſed non allocatur*, becauſe the defendant, by his rejoinder, has confeſſed, that ſuch a rent was in arrear, and has waived taking iſſue upon it, and taken iſſue upon another matter, and therefore this ſhall be well enough after a verdict; and *per Hale* chief baron, it is all one in ſubſtance, to plead as the plaintiff has done, and to have pleaded *ſecundum formam & effectum indenturæ*; for the condition of the bond comprehends, all that is compriſed in the leaſe. But though it might have been made a queſtion upon a demurrer, there can be no doubt of it after a verdict. *Hard.* 319.

In caſe on a promiſe to re-deliver rings or pay 18 l. held naught after a verdict, becauſe plaintiff had averred that he had not re-delivered the rings but omitted to ſay nor paid him the 18 l.

Anonymous in caſe upon a promiſe to re-deliver ſome rings to the plaintiff in as good plight, *&c.* or pay him 18 *l.* The plaintiff averred that the defendant had not re-delivered the rings but omitted to ſay, nor paid him the 18 *l.* and this was held to be naught, though after a verdict (upon Not guilty) found for the plaintiff: becauſe it may well be that the 18 *l.* was paid, and then the plaintiff had no cauſe of action. *Hard.* 320.

Action for rent ſhould not be in caſe without an expreſs promiſe.

Sir *John Trevor* againſt *Roberts*, in caſe, on a promiſe to pay, in conſideration that plaintiff licenſed, and permitted defendant to enjoy ſuch lands. After a verdict for the plaintiff; it was moved in arreſt of judgment, that the licence and permiſſion amounted to a demiſe, and therefore the action ought to have been in debt

and

and not on the caſe, as 5 *Hen.* 7. 1. *Cro.* 2 *Rep.* 668. *Cro.* 3 *Rep.* 561, 786. 2. becauſe the plaintiff has not ſet forth his title to the land. *Per Hale* chief baron, This licence and permiſſion, does amount to a leaſe, upon which an action upon the caſe does not lie without expreſs promiſe; but upon an expreſs promiſe to pay rent, an action upon the caſe will well lie; and ſo it hath been adjudged. For it may be the promiſe was the ground of the leaſe and reſervation; and here we are after a verdict which has found the promiſe. So that we are to preſume there was an expreſs promiſe to pay ſo much money, in conſideration that the plaintiff would permit him to enjoy the land. *Sed adjornatur'*. *Hard.* 366.

Since theſe Reports an action upon the caſe has been given by ſtatute for the uſe and occupation where the promiſe is implied upon a *quantum meruit*.

The ſtatute has ſince given the plaintiff an action on the caſe, for the uſe and occupation where a promiſe is implied.

Anonymous in an action *tam quam in Sccio.* upon the ſtatute of uſury, after a verdict for the plaintiff it was moved in arreſt of judgment, that it lies not in this court for uſury committed in *London*; though it would lie upon the ſtatute of 21 *James*, by which ſtatute there ſhall be no ſuit upon a penal ſtatute, but as that act directs, which does not extend to the court of exchequer, unleſs the offence were committed in *Middleſex*. Alſo uſury is an offence at the common law.

Action on the ſtatute of uſury may be brought in the exchequer.

Hale chief baron: *Jewiſh* uſury was prohibited at common law, being 40 *per Cent.* and more, but no other, and here the ſuit being for taking more intereſt than 6 *l. per Cent.* ſhall be intended to be grounded upon that ſtatute that forbids the taking more than 6*l.* and by that law the ſuit is given in no court particular, and therefore may well be proſecuted here though if a particular court had been named as in 21 *James*, it would have been otherwiſe, and we will not preſume that a ſuit is out of our juriſdiction, if we may ſafely and fairly intend that it is within it: and if the law were held otherwiſe, many ſuch ſuits in *C. B.* would be avoided, and it would be of dangerous conſequence: and ſuch uſury is now ſo common, that all means that may be, muſt be made uſe of to prevent it; but the court took time to conſider of it. *Hard.* 420.

Action of debt will not lie on a bill of exchange againſt the acceptor.

Anonymous. In an action of debt upon a bill of exchange accepted by defendant, on *nil debet* a verdict was obtained for the plaintiff, and motion made in arreſt of judgment, whether debt lay; and after precedents had been ſearched by direction of the court—The court declared their opinions that an action of debt would not lie upon a bill of exchange accepted, againſt the acceptor: but that a ſpecial action upon the caſe muſt be brought againſt him, for that the acceptance does not create a duty, no more than a promiſe made by a ſtranger to pay, *&c.* If the creditor will forbear his debt, and he that drew the bill continues debtor notwithſtanding the acceptance, which makes the acceptor liable to pay it: and this courſe of accepting bills being a general cuſtom amongſt all traders both within

and without the realm, and having every where that effect as to make the acceptor ſubject to pay the contempts, the court muſt take notice of that cuſtom; but the cuſtom does not extend ſo far as to create a debt; only makes the acceptor *onerabilis* to pay the money. Though cuſtom may give an action of debt, as in 20 *Hen.* 7. 1. of toll, and ſo in caſe of a fine for a copyhold. Wherefore and becauſe no precedent could be produced, that an action of debt had been brought upon an accepted bill of exchange, judgment was arreſted. *Hard.* 485.

Speaking of a juſtice to his ſervant, your maſter's witneſſes are perjured, and your maſter is the maintainer and upholder of them, held not actionable.

Pugh againſt *Owen.* In caſe for words ſpoken of a juſtice of peace to his ſervant, *viz.* your maſter's witneſſes (in ſuch a cauſe) were perjured, and your maſter is the maintainer and upholder of them. After a verdict for the plaintiff, it was moved in arreſt of judgment, that theſe words were not actionable, and of that opinion were the barons *Rainsford* and *Turner*, becauſe the words did not relate to his office of juſtice, but were ſpoken as of a private perſon: not like to the caſe in 4 *Rep.* 16. and it was not ſaid, that he upheld their perjury, but only countenanced their perſons. *Per Hale* chief baron *contra*; for theſe words, if true, are a ſcandal to his office; and upholding here can have no other meaning than abetting them in their perjury. But judgment was arreſted. *Hard.* 501.

Venire facias jurator' de vicineto of a foreſt held good without naming any pariſh.

Philips againſt *Evans.* In ejectment a *venire facias jurator' de vicineto* of a foreſt without naming any pariſh, held good. *Lane* 33.

Of judgments.

Poſtea and inquiſition to be filed.

If there be a verdict on inquiſition found, the *poſtea* and the inquiſition are reſpectively filed on the file of writs, of the term on which the *diſtringas jurator'* or inquiry were made returnable.

A rule of four days in arreſt of judgment muſt be given before a judgment can be ſigned.

The plaintiff (or the defendant if the verdict is for him) thereupon gives a rule of four days in the book of orders for the defendant to ſhew cauſe in arreſt of judgment, and if no cauſe be ſhewn in court in arreſt of judgment within the ſaid four days, the judgment may be ſigned on the 5th day.

Sunday not included in the four days.

Sunday is not included in the four days in arreſt of judgment, but there muſt be four juridical days. 2 *Salk* 625. *pl.* 6. *Trin.* 2 *Ann. B. R.* Sir *Chriſtopher Hale* againſt *Owen.*

If the plaintiff will not enter up his judgment by verdict, the court will give the defendant leave to do it.

Dioniſius Andrews verſ.——*Mich.* 13 *Car.* 2. *in Sccio.* In an action upon the caſe for undermining the plaintiff's houſe, whereby a great part of it fell in, and ſpoiled many of his goods; upon Not guilty pleaded, there was a verdict for the plaintiff, and damages given. But the plaintiff not being content with the damages, would not enter up his judgment upon the verdict, but brought another action: and now the defendant moved that he might have liberty to enter up judgment upon the verdict for his own avail, to the end he might plead it to a new action, and the court gave leave accordingly. *Hard.* 219.

Eſtoppel in the king's caſe.

Anonymous, *Trin.* 7 *Ja. Lane's Rep.* 65. *in Sccio.* It was ſaid by *Tanfield* chief baron, That if a man had judgment againſt *A.* upon an obligation,

ligation, who dieth, and another obligee of the ſaid *A.* aſſigns his obligation to the king, the executors of *A.* ſatisfy the ſaid judgment, it is good againſt the king, in reſpect the debt now due to the king, was not upon record before the death of the teſtator; which was granted by the court.

Anonymous, *Mich.* 7 *Ja. Lane* 83. *in Sccio.* *Tanfield* chief baron excepted to the form of an entry for the king which was, that *poſtea* the juſtices of aſſize *deliberaverunt tenorem placiti, &c.* for by him the precedents in the king's bench are, *quod deliberaverunt recordum prædictum*, which as he thought was the beſt; but after upon the view of a precedent ſhewed, where an exception was taken in baron *Manwood*'s caſe, upon a writ of error in the exchequer chamber after judgment given here, and the entry then allowed to be good, and upon the view alſo of divers precedents ſhewed by *Turner* maſter of the pleas, the chief baron, and all the court agreed and reſolved that the entry of *tenorem placiti* or *tenorem recordi* is as good or better than *recordum prædictum*, *&c.* and therefore nothing was ſpoken to that exception: See the precedent of pleading in *Stradling* and *Morgan*'s caſe, *Plowden*, where it is *tenorem placiti.*

Tenorem placiti or tenorem recordi as good as recordum prædictum in an entry for the king.

Mich. 12 *Edw.* 4. An action was brought in *Eſſex* by *Geoffry Swinburn debitor domini regis* againſt *Catherine Cook* widow, in a plea of treſpaſs, whereupon judgment was for the plaintiff, and the damages were for 100 marks, *Et quer' dat inde clerico placitorum et clericis ſuis* 40*s.*

Dam' clara'.

Mich. 17 *Edw.* 3. Between *Glouceſter* and *Brookſworth* in treſpaſs judgment for 58*l.* damages, *Et quer' dat clericis brevis* 100*s.*

Same term and year in *Hertford*; judgment for 20 marks damages, *Et quer' dat clericis brevium* 40 *s. inde.*

Creditors by judgment at law and by decree in equity ſhall be paid equally by an executor, without any preference.

In *Peploe* againſt *Swinburn*, *October* 26th 1719. The queſtion was, who ſhould have the preference to be paid by an executor, a creditor by judgment at law, or a creditor by decree in a court of equity: Sir *Edward Northey*, who was counſel for the judgment creditor ſaid, That it was never taken in the court of chancery, that a decree ſhould be upon an equal foot with a judgment at law, though it ſhould with a pocket record, as a recognizance, *&c.* The barons were divided in their opinion, and no judgment was given in the point at this day; but in *Hilary* term following it was decreed, that the judgment and decree creditors ſhould come in and be paid equally. *Vide* 2 *Chanc. Rep.* 193. 1 *Chanc. Rep.* 192. 1 *Lev.* 155. *Joſeph* and *Mott*, *in canc' coram* lord keeper *Wright.* 1 *Leon.* 155. *Bunb.* 48.

Confirmed by ſubſequent decrees, and by appeal to the houſe of lords.

3 *Peer Williams* 402. *Nota*; It is now become the eſtabliſhed doctrine, that a decree of the court of chancery is equal to a judgment in a court of law, and where an executrix of *A.* who was greatly indebted to divers perſons, in debts of different natures, being ſued in chancery by ſome of them, appeared and anſwered immediately, admitting their demands, (ſome of the plaintiffs being her own daughters) and other of the creditors ſued the executrix at law, where the decree not being pleadable, they obtained judgments; yet the decree of the court of chancery, being for a juſt debt, and having a real priority in point of time, not by fiction, and relation to the firſt day of term, was preferred in the order of payment to the judgments,

judgments, and the executrix protected and indemnified in paying a due obedience to ſuch decree, and all proceedings againſt her at law ſtayed by injunction. *Morrice* againſt the *Bank* of *England*. Decreed firſt at the Rolls by Sir *Joſeph Jekyll* in *Auguſt* 1735. which was affirmed by the lord *Talbot* in *November* 1736. and his lordſhip's decree affirmed in parliament, in *May* 1737.

In *Foreſter's Rep.* intitled *Caſes in Equity*, during the time of the late lord chancellor *Talbot*, *page* 217. this point was well ſettled with great clearneſs by his honour the ſaid late maſter of the rolls, and his decree affirmed with a little variation by lord *Talbot*, and his lordſhip's decree affirmed upon an appeal in the houſe of lords.

For filing the *poſtea* or inquiſition, the ſolicitor pays 1*s.* and adds his fee of 3*s.* 4*d.* for the return thereof; he alſo pays 11*s.* 2*d.* for the duty, rule, and ſigning judgment, and 3*s.* for uſher's clerk, and docquet, and 6*s.* 4*d.* for the bill of coſts, taxing and attending, to which the ſolicitor adds his fee of 3*s.* 4*d.*

Of injunctions for poſſeſſion in ſpecial caſes.

Injunction to ſequeſter the profits of a rectory till defendant ſhould anſwer contempts and treſpaſs.

John Powell one of queen *Elizabeth*'s receivers general, having ſued out of the court divers proceſs againſt *William Minors*, concerning the title of the rectory of *Orcop* in the county of *Hereford*, which the defendant refuſed to obey. Thereupon the plaintiff procured a ſpecial warrant from the court to one of the meſſengers of the ſame court, to apprehend the ſaid defendant for his contempts, and

to

to anſwer the plaintiff's action, who being by the meſſenger arreſted, he very contemptuouſly withſtood it, as by the ſaid meſſenger is depoſed. The court thereupon awarded an injunction to the ſheriff of the county to ſequeſter the profits of the ſaid rectory till the defendant ſhould anſwer the ſaid contempts, and alſo the party of his treſpaſs. *Hil.* 27 *Eliz. Ball's MS.* 40.

As the king's farmer plaintiff may recover poſſeſſion by injunction without any ejectment.

Richard ap William againſt *Richard Griffith* in treſpaſs: The plaintiff declaring as farmer to the queen of the ſame lands, whereof he brought his action, and having a verdict and judgment; notwithſtanding by the courſe of the law he was not to recover his poſſeſſion by that action, yet becauſe it appeared by the record that the plaintiff was the queen's farmer of the ſame land, and had a verdict for the treſpaſs, an injunction was granted by the court for the poſſeſſion. *Mich.* 31 & 32 *Eliz. Ball's MS.* 40.

Injunction for the preſervation of the woods till plea determined.

In the ſame term, in *Oliphus Leigh* againſt *Henry Ockley* and others in treſpaſs; the plaintiff declares as farmer to the queen of a wood called *Merehurſt* in *Surry*, for cutting down woods therein; at plaintiff's motion, an injunction was granted againſt the defendant for preſerving the woods till the plea was determined. *Ball's MS.* 40.

In *Mich.* 32 & 33 *Eliz. Finch Knight* againſt *Throckmorton & al.* an injunction was awarded againſt the defendant for ſtay of felling of woods, except neceſſary fewel, and until further order ſhould be given by the court. *Ball's MS.* 40.

Of executions.

Where final judgments are entred either by *nil dicit*, *non ſum informatus* or confeſſion, or on verdicts, or demurrers, the plaintiff may forthwith take out execution, either againſt the body, lands or goods of the defendant.

Execution to be taken out after judgment ſigned.

According to Sir *Edward Coke*, there are two ſorts of executions; one final, the other with a *quouſque*, tending to an end: an execution final is that which makes money of the defendant's goods, or extends his lands, and delivers them to the plaintiff, which he accepts in ſatisfaction, and is the end of the ſuit, and all that the king's writ requires to be done: the other writ with a *quouſque*, though it tendeth to an end, is not final; as in caſe of a *capias ad ſatisfaciendum*, which is not a final execution, but the body of the party is to be taken, to the intent the plaintiff be ſatisfied his debt, and the impriſonment of the defendant not being abſolute, but until he do ſatisfy the ſame. 6 *Co. Rep.* 87.

Two ſorts of executions, one final, the other with a quouſque.

A man can have but one execution; but it muſt be intended an execution with ſatisfaction, and the body of the defendant is no ſatisfaction, only a pledge for the debt. 5 *Rep.* 86.

Plaintiff can have but one execution with ſatisfaction.

The writs of execution at common law were only a *fieri facias* on the goods and chattels; and a *levari facias* to levy the debt or damages upon the land and chattels: afterwards a *capias ad ſatisfaciendum* was given by ſtat. 25 *Edw.* 3. *cap.* 17. and an *elegit* by ſtat. *Weſtm.* 2. *cap.* 18. which makes the body liable, and the future

Executions at common law and by ſtatute.

profits of lands, &c. 1 *Inſt.* 154. 2 *Inſt.* 394.

Executions in perſonal actions are ca. ſa. fi. fa. or elegit, in real or mixed actions, habere facias ſeiſinam, or habere facias poſſeſſionem.

In perſonal actions the executions are as aboveſaid, either by *capias ad ſatisfaciendum*, *fieri facias*, or *elegit*; but in real and mixed actions, the writs of execution are alſo *habere facias ſeiſinam*, to put the party in poſſeſſion of his freehold recovered by judgment of law; and *habere facias poſſeſſionem* to put him in poſſeſſion of his term. 8 *Rep.* 141.

The inſtitution of the writ of ca. ſa'.

The writ of *capias ad ſatisfaciendum* lay only at common law, in caſe of the king, who by his prerogative might have execution of the body, goods and lands of his debtor; but by the ſtatute of *Marlbridge*, 52 *Hen.* 3. *cap.* 23. it is enacted, That if bailiffs who ought to make account to their lords, do withdraw themſelves, and have no lands, nor tenements, whereby they may be diſtrained; then they ſhall be attached by their bodies; ſo that the ſheriff in whoſe bailiwick they be found, ſhall cauſe them to come to make their account; and by the 25 *Edw.* 1. *cap.* 17. it is accorded, that ſuch proceſs ſhall be made in a writ of *debt*, and *detinue of chattels*, and taking of beaſts by writ of *capias*, and by *proceſs of exigent* by the ſheriff's return, as is uſed in a writ of *account*.

The ſtatute of *Marlbridge* ſee explained 2 *Inſt.* 143. that theſe ſtatutes introduced the *capias* which did not before lie in theſe caſes. *Vide* 3 *Co.* 11, 12. *Co. Lit.* 289. 2 *Inſt.* 394. *Godb.* 290. 2 *Leon.* 85. 2 *Bulſt.* 63. *Regiſt.* 136.

The ſheriff cannot take bail on ca. ſa. nor return a reſcue thereon.

On this writ the ſheriff cannot take bail, nor can he return that the party was reſcued, for he may take the *poſſe comitatus*; and therefore if

if he returns, that the party was reſcued, an action lies againſt him for the eſcape, or a new *capias* againſt the party, for an ineffectual execution is as none. 1 *Rol. Abr.* 904. *Cro. Car.* 240.

The *fieri facias* and *levari facias* are judicial writs which lay at the common law. The *fieri facias* on which the goods and chattels of the debtor only could be taken in execution, took its name, as Lord *Coke upon Littleton* 290. *b.* obſerves, from the words of the writ, *quod fieri facias de bonis & catallis, &c.* but on the *levari facias* the ſheriff was commanded *quod de terris & catallis ipſius A. levari faciat, &c.* 3 *Co.* 11. Fi. fa. why ſo called.

In the king's caſe the judges ought to award execution *ex officio* without any ſuit. *Co. Litt.* 291. *a.* From hence, and from what has been cited above, it may be preſumed the execution firſt took its riſe againſt an accountant *prima facie*, which will be found in the appendix under the title *fieri facias.* Execution without ſuit.

But the ſheriff cannot by force of the words *terris & catallis* meddle with the debtor's lands, ſo as to ſell or deliver them to the creditor in ſatisfaction of the debt, but may collect the debt out of the profits of the land, as the corn or graſs growing thereon, or out of the rents payable to the debtor. *Godb.* 290. *Plowd.* 441. *a.* *Finch* 101. *Comb.* 470. and *vide* 2 *Inſt.* 453. what ſhall be counted the iſſues of the land. On Fi. fa. the ſheriff cannot take the lands but only the produce of them.

On theſe writs the whole perſonal eſtate is liable to execution, except wearing apparel; and it hath been held that if the party hath two gowns the ſheriff may ſell one of them. 3 *Co.* But the whole perſonal eſtate is liable thereto.

Co. 12. *(f.) Comb.* 356. *per Holt* chief juſtice.

If the ſheriff takes the goods of a ſtranger, tho' plaintiff aſſures him they are the defendant's, he is a treſpaſſer; the ſheriff may impanel a jury to know whoſe property they are.

But the abſolute property of thoſe goods muſt be in the debtor, and therefore if the ſheriff takes the goods of a ſtranger though the plaintiff aſſures him they are the defendant's, he is a treſpaſſer, for he is obliged at his peril to take notice whoſe the goods are, and for that purpoſe may impanel a jury to inquire in whom the property of the goods is veſted; and this it is ſaid ſhall excuſe him in an action of *treſpaſs.* 2 *Dalt. Sheriff* 146. *Keilw.* 119, 120. *Bro.* tit. *Treſpaſs* 99.

Sheriff cannot take goods in pawn, or letten for a term of years.

The ſheriff cannot take in execution goods pawned or gaged for debt, nor goods demiſed or letten for years, nor goods diſtrained. *Bro.* tit. *Pledges* 28. *Dyer* 67. in marg.

Sheriff cannot deliver the goods, but muſt ſell them.

It was ſaid by *Pollexfen* chief juſtice, in the caſe of *Beaty* and *Sampſon*, 2 *Vent.* 95. that the ſheriff cannot deliver the defendant's goods to the plaintiff in ſatisfaction, but they muſt be ſold, and there needs no appraiſement as there muſt be upon an *elegit.*

Venditioni exponas when neceſſary.

If the ſheriff upon a *fieri facias* takes goods in execution, and returns that he hath ſo done, and cannot find buyers; or if he delay to deliver them to the party, *&c.* then the writ *venditioni exponas* ſhall iſſue to the ſheriff, to make ſale of the goods, and bring in the money. 13 *Hen.* 7. 1. *Dyer* 363.

Cannot be awarded if the goods are out of the ſheriff's hands.

A *venditioni exponas* cannot be awarded, if it appears that the goods are out of the hands of the ſheriff. 2 *Saunders* 344.

But

But if a ſuperſedeas be not delivered to the ſheriff till he hath in part executed a writ of execution, he may afterwards be authorized to go through with it by a *venditioni exponas*, as he may alſo in the like caſe after a writ of error. *Dyer* 98. *Cro. Eliz.* 597. 1 *Roll. Abr.* 894.

But if the ſheriff has in part executed, he may (though a ſuperſedeas be delivered) have a venditioni exponas to go through with it.

Rex againſt *Reeves et al' Trin.* 1719. *in Sccio.* It was ſaid by baron *Price* in this caſe, that no *venditioni exponas* ought to iſſue without motion in court. *Bunb.* 45.

Ought not to iſſue without motion in court.

A *fieri facias* abates not by the plaintiff's death, but the ſheriff muſt go on to execute his writ. *Mich.* 3 *Ann. Clerk* and *Withers*, *Salk.* 322. 6 *Mod.* 290. 1 *Mod.* 188. *Mod. Caſ. in L. and Eq.* 225.

Fieri facias abates not by plaintiff's death.

By the ſtat. 21 *Ja.* 1. *cap.* 24. If the defendant die in execution, plaintiff may have an execution againſt his lands, goods and chattels.

If defendant die in execution plaintiff may have execution againſt his lands and goods.

If the defendant is a beneficed clergyman, and the ſheriff returns *quod eſt clericus beneficiatus*, *&c.* a writ ſhall go to the biſhop of the dioceſe to levy the debt *de bonis eccleſiaſticis*, who thereupon ſends forth a ſequeſtration of the profits of the clerk's benefice, directed to the churchwardens, *&c.* (for which ſee the appendix); but this writ of ſequeſtration muſt be renewed every term. 2 *Inſt.* 4, 472, 627.

If defendant is a beneficed clergyman a fieri facias de bonis eccleſiaſticis may iſſue.

The ſequeſtration is of the profits of the benefice, to be paid over to him that had the judgment, till the debt is ſatisfied. 2 *Inſt.* 472. 2 *Roll. Abr.* 474.

To ſequeſter the profits of the benefice till debt is ſatisfied.

Rule for a biſhop to return a fi. fa de bonis eccleſiaſticis.

In *Moxon* executrix againſt *Langharne* clerk, *Eaſter* 1747. *in Scio.* 1 *June*, at ſide bar a rule was obtained for the biſhop of *St. Davids* peremptorily to return a *pluries teſtatum fi. fa. de bonis eccleſiaſticis*, which was done accordingly.

Order for the biſhop to amend his return.

And in *Hillary* term following the biſhop, on a rule in court to ſhew cauſe, amended his return.

Motion for an attachment againſt the defendant and others.

On the 14 *June* 1748. on the motion of Mr. *Perrott* for the plaintiff in the ſame cauſe, and reading an affidavit of *Thomas Rees*, it was ordered, That *William Langharne*, and others, ſhould ſhew cauſe on the 28th of the ſame month, why an attachment ſhould not iſſue againſt them for the matters contained in that affidavit.

Which rule was afterwards enlarged, and on the 28th of *Nov.* following was diſcharged by the motion of Mr. *Starkie* and Mr. *Ford*, and reading the affidavit of *Thomas Rees* and others.

Writ of elegit how to be executed by a moiety of the lands.

Upon the writ of *elegit* the ſheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraiſe the ſame, and alſo to inquire as to his lands and tenements; and upon ſuch inquiſition the ſheriff is to deliver all the goods and chattels (except the beaſts of the plough) and a moiety of the lands to the party, and muſt return his writ, in order to record ſuch inquiſition in the office from whence it iſſued.

The moiety to be delivered by metes and bounds.

When the jury have found the ſeiſin and value of the land, the ſheriff, and not the jury, is to ſet out and deliver a moiety thereof to the plaintiff by metes and bounds. *Cro. Car.* 319. *Sparrow* and *Matterſoch* ſo reſolved, and that all the precedents were ſo.

If

If upon an *elegit* the ſheriff delivereth a moiety of an houſe without metes and bounds, ſuch return is ill, and ſhall be quaſhed for incertainty. *Carth.* 453. *per Holt*, ch. juſt.

If the ſheriff, on an inquiſition upon an *elegit*, returns the defendant to have 20 acres in *Dale*, and 20 acres in *Sale*, and delivers the 20 acres in *Sale*, for the moiety of the whole; all is void, for he ought to deliver a moiety of the 20 acres in each vill, and this might be avoided in evidence in ejectment brought for the lands. 1 *Lev.* 160. *per curiam*; earl of *Stamford* and *Needham*, but *vide* 1 *Sid.* 239. *S. C.*

Each parcel of the lands to be be divided into moieties.

This caſe of the earl of *Stamford* and *Needham* as reported by *Lev.* was denied by lord ch. juſt. *Willes* in the caſe of *Walker* and *Dodeſwell*, *26th January* 1737. on argument at his chambers, the point having been reſerved before him at the preceding *Hereford* ſummer aſſizes, and it was obſerved that the objection is not taken notice of in *Sid.* 239. and 1 *Keb.* 858. who report the ſame caſe; and in the caſe of *David* leſſee of *Davies* againſt *Manſel*, bart. the ſame point was reſerved at *Hereford* for the opinion of the court of exchequer; but in *Eaſter* 2 *Geo.* 3. all the barons held clearly, that there was no occaſion for the ſheriff to deliver a moiety of the lands in each vill, and ordered the *poſtea* to the clerk in court, for the plaintiff, and the chief baron cited 2 *Inſt.* 394. *Bro. Elegit pl.* 14. *Raſtal's Entries* 261. *Clift's Entries* 877. *Lilly's Entries* 211, 212. and the ſaid caſe of *Walker* and *Dodeſwell.*

Held otherwiſe by a later determination.

No occaſion for the ſheriff to deliver a moiety of the lands in each vill.

If *A.* and *B.* recover ſeverally againſt *C.* and *A.* ſues out execution, and has a moiety of *C.*'s land delivered to him on an *elegit*, and then *B.* ſues out an *elegit*, he can only have a moiety

If two elegits are executed the firſt has a moiety, the ſecond a moi-

ety of the other moiety.

of the lands which remained with *C.* after the firſt extent, and not the whole delivered to him. *Cro. Eliz.* 482. *Huyt* and *Cogan.*

If both executed the ſame term, both recovers the whole of each moiety.

But if *A.* acknowledges two judgments to *B.* and in the ſame term he takes out two *elegits*; on the one he may have a moiety of *A.*'s lands delivered to him, and on the other the other moiety, and is not reſtrained to a moiety of a moiety, for in judgment of law the whole term is but one day.

Copyhold lands exempted from the elegit.

The ſtatute of *Weſtm.* 2. which gives the *elegit*, extends not to copyhold lands, for then the lord would have a tenant brought in upon him without his admittance or conſent. 3 *Co.* 9 *Co. cap.* 149.

After elegit iſſued if plaintiff dies, ſcire facias lies not.

Hudleſton and *Hill* againſt *Bows*, *Hil.* 4 *Ja.* An *elegit* upon a judgment iſſued at the ſuit of *Hill*, and after *Hill* died, and his eldeſt ſon ſued a *ſcire facias* upon the ſaid judgment; and holden that it lieth not. *Lane's Rep. in the Exchеq.* 16.

If defendant be in priſon he muſt be charged in execution by habeas corpus.

If the defendant ſhould be in priſon when judgment was obtained, a *habeas corpus* muſt iſſue, directed to the keeper of the priſon where the defendant is in cuſtody, commanding him to bring the priſoner before the court, to be charged in execution, (the form of the *habeas corpus* is inſerted in the appendix) and upon the return of the writ, and producing the priſoner at the bar, he is committed to the *Fleet*, charged in execution in that cauſe, and alſo charged with what other cauſes are returned by the officer to whom the *habeas corpus* was directed.

If ca. ſa. in the hands of the ſheriff, fi. fa. cannot afterwards iſſue.

If the plaintiff takes out execution againſt the defendant's body after the writ has been in the hands of the ſheriff (and not returned *non eſt invent.*) the plaintiff cannot take out execu-

tion againſt the defendant's lands or goods without a *ſcire facias*; but if the plaintiff takes out execution *de bonis & catallis defendentis* and the goods will not ſatisfy the debt, the plaintiff having filed the writ of execution, with the ſheriff's return indorſed thereon, and made an entry thereof under the judgment roll, may have a *capias ad ſatisfaciendum* againſt the body of the defendant for the remainder; or may have a writ of *elegit* for a proportion of the defendant's lands, but no *capias ad ſatisfaciendum* can iſſue after an *elegit* in caſe that the proportion of the lands ſhould fall ſhort.

But after fieri facias a ca. ſa. may iſſue for reſidue.

But it is held by my lord *Hobart*, that if upon an *elegit* the execution be on the goods only without any lands, and they appear not to be ſufficient, that the party may have a *capias*, for it is in effect but a *fieri facias* tho' the word be *elegit*. Hob. 58.

Goods only taken by an elegit if they prove inſufficient, plaintiff may have ca. ſa. for the reſidue.

If the judgment be in debt for a penalty, the plaintiff may take out execution and levy the whole penalty, which is forfeited by the defendant's own covenant, conformable to the uſage and cuſtom and laws of the land. The defendant therefore can have no remedy at law, but as he may ſeek and have his relief in a court of equity, where the principal intereſt and coſts only will be allowed to the plaintiff, at the peril of his paying coſts in equity; it is highly prudent, and perhaps neceſſary, for the credit of his attorney, to indorſe on the back of the execution what is *bona fide* due, and no more; and the indorſement uſually made on the back of the writ is in the following words, Levy 550*l.* 6*s.* (the ſum due for principal, intereſt

Judgment in debt for a penalty, the whole may be levied at law; but as equity will relieve if more levied than is due for principal, intereſt and coſts, what is bona fide due ought to be indorſed on the writ.

and coſts) beſides poundage and other neceſſary charges of levying.

Fieri facias delivered to the ſheriff after defendant's death, but teſted before is well enough.

A *fieri facias* upon a judgment iſſued againſt *J. S.* The attorney for the plaintiff informed him of it, upon which *J. S.* went and ſhot himſelf through the head; after his death the attorney delivered the *fieri facias* to the ſheriff, who executed it upon the goods of *J. S.*

It was now moved to ſet aſide this execution as irregular, becauſe the defendant was dead before the delivery of the writ to the ſheriff: but *per curiam* clearly, that the execution was regular, and that the ſtatute of frauds and perjuries extended only to creditors and purchaſors, but not to executors or adminiſtrators, who ſtood in the place of the party; and conſequently, as to them, the writ bound from the teſte, which was before the death of *J. S.* *Springer* againſt *Sommerville*, *Oct.* 25, 1729. *Bunb.* 271.

The fieri facias binds from the teſte.

Upon a motion to ſet aſide an execution executed, becauſe doctor *Needham*, upon whoſe goods the execution was levied, was dead at the time the *fieri facias* was delivered to the ſheriff, ſo that the property was never bound by that writ, for that the lien has retroſpect only to the time when the writ is delivered to the ſheriff. 29 *Car.* 2. *c.* 3.

The court held, that the writ binds from the teſte, as againſt the party, in the ſame manner as at common law; though in reſpect to purchaſors this ſtatute has altered it. Dr. *Needham*'s caſe, *Eaſter* 3 *W. & M. B. R.*

Judgment entred in Hil. vacation well ſupports a fi. fa. teſted before.

The ſame reſolution was in the caſe of *Parſons* againſt the executors of *Gill*, *Eaſt.* 13 *W.* 3. *B. R.* in which it was reſolved, that a judgment entred in *Hilary* vacation well enough ſupported

ſupported a *fieri facias* taken out after, but teſted before, the judgment (by relation) being taken to be of the preceding term. 1 *Mod.* 188.

A purchaſe was made of lands lying in *Radnorſhire*, of *Powell* by the duke of *Chandos*; while the purchaſe was depending, *Burton*, the receiver general of that county, paid *Powell* 300 *l.* and took a bond in the name of the crown, upon which an extent iſſued againſt *Powell*. The extent was teſted *undecimo anno Georgii Regis ſeptimo*, omitting the month; for which reaſon it was moved by Mr. ſerjeant *Comyns* and Mr. *Bootle* to diſcharge it; and the caſes under mentioned were cited to prove that writs without a teſte ſhall abate. The teſte of the execution amended.

Baron *Montague*: That the diſtinction is between original and judicial writs, which laſt only are amendable, becauſe there is a record to amend them by: But quære (ſays the reporter himſelf), if an extent is not an execution, and may not be amended by the fiat? And afterward *Nov.* 22d following, this was amended by three barons, *contra Montague*. *Bunb.* 83. caſes cited *Latch* 11. 1 *Sid.* 304. 2 *Jones* 83. 1 *Lev.* 2. *Cro. Eliz.* 592. 2 *Salk.* 700. *Shore* 80. *Salk. Tutchin*'s caſe 51. Sir *Thomas Jones* 41. Judicial writs amendable and originals not, and why.

The forms of the ſeveral writs of *fieri facias* and *levari facias* againſt the goods, *capias ad ſatisfaciendum* againſt the body, *elegit* againſt the lands and goods, and the *habere facias poſſeſſionem* and *ſeiſinam* are inſerted in the appendix.

Of poundage due to ſheriffs on executions.

Any ſheriff, under-ſheriff, bailiff of liberties, their officers, ſervants or deputies, by colour of their office may take for the ſerving of any extent Sheriffs intitled to 1 s. in the pound not exceeding 100 l. and 6d.

for every pound above 100 l.

tent or execution upon the body, lands or goods 12 *d.* for every 20 *s.* where the ſum exceeds not 100 *l.* and 6 *d.* for every 20 *s.* above 100 *l.* that he ſhall levy and deliver in execution, or the body taken in execution for.

Under the penalty of treble damages and 40 l. half to the informer.

Every ſheriff, *&c.* acting contrary ſhall forfeit to the party grieved his treble damages, and 40 *l.* one moiety to the queen, and the other to the party that will ſue for the ſame; *ſtat.* 28 or 29 *Eliz. c.* 4. *ſect.* 1. ſo adjudged, *Cro. Car.* 287.

Not to extend to executions out of inferior courts of corporations.

This act not to extend to any fees to be taken for any execution within any city or town corporate. *Same ſtat. ſect.* 2.

Although it be provided by this clauſe, that the act ſhall not extend to the ſheriffs of cities or corporations, yet it was held, that it was only to be intended for the executing judgment in the courts of the ſaid corporations, and not to the ſheriffs of cities or corporations, for the executing judgments out of ſuperior courts. *Cro. Car.* 287.

Nor to executions upon Statutes Merchant, recognizances, &c.

Reſolved that this ſtatute does not extend to executions upon ſtatutes merchant, recognizances, *&c. Cro. Car.* 332.

Sheriff intitled on writs of poſſeſſion to 1 s. in the pound of the yearly rent, not exceeding 100 l. and 6d. in the pound for all above.

But by ſtat. 3 *Geo.* 1. *cap.* 15. *ſect.* 16. on writs of ſeiſin or poſſeſſion, ſheriffs, *&c.* to be allowed 12 *d.* for every 20 *s.* of the yearly value (rent) of the lands, whereof poſſeſſion or ſeiſin ſhall be given, where the whole exceeds not the yearly value of 100 *l.* and 6 *d.* for every 20 *s.* above the yearly value of 100 *l.*

Under the penalty to the

By the ſame ſtatute ſect. 16. ſheriffs, *&c.* taking poundage for executing any writ of *capias*

ad

ad ſatisfaciendum, or charging any perſon in execution by virtue of ſuch writ, for any greater ſum than the real debt amounts to, and which is to be marked on the back of the writ, to forfeit on conviction to the party grieved treble damages, and double the ſum extorted, to be decreed by the courts out of which ſuch writ iſſued, on complaint and proof of ſuch extortion, in ſuch ſummary way as to the court ſhall ſeem meet; and every perſon ſo offending to forfeit 200 *l.* one moiety to the king, the other to ſuch as ſhall ſue in any court at *Weſtminſter*; ſuch ſuit to be commenced within two years after the offence.

party grieved of treble damages and double the ſum extorted, and 200 l half to the informer.

Since the ſtatute of *Eliz.* it hath been uſual to take a fee upon a *ca. ſa.* and if there be a ſecond execution, as where the party dies in execution, and a *fieri facias* iſſues, the ſheriff ought to have a fee on ſuch ſecond execution, and an action of debt will lie for his fee, for the law permitting him to take it, makes it a duty. *Show.* 363. *Salk.* 331, 333. But he cannot take a bond for his fees; for under colour thereof he may ſo have double fees. *Cro. Car.* 287.

Uſage for the Sheriff to take his fee for the caption beſides, and action of debt will lie for it, but he cannot take a bond for his fee.

For fees of executing an *elegit* debt lies, for *per Holt* ch. juſt. there is the ſame reaſon for fees for executing an *elegit* as an extent. *Salk.* 333.

Action of debt will lie for fees on executing elegit.

If an erroneous writ be delivered to the ſheriff and he executes it, he ſhall have his fees, though the writ be erroneous. *Cro. Car.* 332.

Sheriff ſhall have his fees tho' the writ be erroneous.

The ſheriff cannot refuſe to obey proceſs for nonpayment of fees. *Str.* 1262. *Mich.* 20 *Geo.* 2. *White* againſt *Haugh*, in which caſe the court ſaid, they could not be making bargains with

He cannot refuſe to obey proceſs for non-payment of his fees, for

which he has his remedy.

people to obey their proceſs, which they would inforce an obedience to, and leave the ſheriff to his action of debt for the fees; which was his legal remedy.

Of the writ of audita querela.

Wherein audita querela lies.

This writ lies where a man hath any thing to plead but hath not a day in court to plead it. To writs of execution the defendant cannot plead, ſo that if there be any matter ſince the judgment, to diſcharge him of the execution, he is to have *audita querela*; it cannot be brought on a releaſe, until judgment is entred of record. 1 *Mod.* 111.

In the nature of a ſuit in equity.

An *audita querela* is in nature of a ſuit in equity, where a perſon is charged with a debt that is paid, or being releaſed, *&c.* and there muſt be a charge and burthen come or coming upon the party that is to have it, of which he ought by law to be diſcharged; and then it is to be in ſuch a caſe wherein he hath no other way to relieve himſelf. 2 *Cro.* 29. 1 *Cro.* 44.

Lies not after judgment upon a matter which might have been pleaded.

But this writ lies not after judgment, upon a matter which the party might have pleaded before. *Cro. Eliz.* 35.

If leſſor recovers of his leſſee and ſues the aſſignee, the latter may have audita querela.

If a leſſee covenants for him and his aſſigns to repair, and aſſigns over, and the covenant is broken, if the leſſor ſues one of them, and recovers damages, and then ſues the other, he may bring *audita querela* for his relief. *Bro. cap.* 74.

Where

Where a man hath goods from me by my delivery, and another takes them from him, ſo that he is liable to both our ſuits, and one of us ſue, and recover againſt him, and then the other ſues him, his remedy is by *audita querela*. *Dyer* 232.

If the goods in the hands of a third perſon are ſued for by the firſt and ſecond owner, and they are recovered by one, the third ſhall have audita querela againſt the other.

One binds himſelf and his heirs in an obligation, if the obligee recover of the heir, and after ſue the executors for the ſame cauſe, they may have this writ. *Plow.* 439.

If an obligee recover of the heir of the obligor, and ſue the executors, they ſhall have audita querela.

If two joint and ſeveral obligors are ſued jointly, and both taken in execution, the death or eſcape of one will not diſcharge the other, ſo as to give him this action; but if ſuch obligors be proſecuted ſeverally, and a ſatisfaction is once had againſt one of them, or againſt the ſheriff upon the eſcape of one, the other may have it. *Hob.* 58. 5 *Rep.* 87.

If two obligors are jointly taken in execution, neither can have this action, but if they are proſecuted ſeverally they may.

If the plaintiff hath had ſatisfaction againſt one treſpaſſer, and he proceed to require it againſt the other, he ſhall have this writ. *Hob.* 66.

Satisfaction had againſt one treſpaſſer will entitle the other.

A plaintiff that ſues an adminiſtrator who has his letters of adminiſtration revoked, the defendant muſt be relieved by *audita querela*, for he cannot plead it. *Style* 417.

If adminiſtration be revoked, the adminiſtrator may have his audita querela.

Upon

On this action ſuperſedeas may go to ſtay execution.

Upon *audita querela* brought a *ſuperſedeas* ſhall go to ſtay execution, and the judgment in this action is to be diſcharged of execution. *Hob.* 2.

On audita querela bail muſt be given.

On allowance of *audita querela*, bail muſt be given in court, unleſs in caſes of neceſſity, when it may be put in before two judges. *Palm.* 422.

If judgment againſt principal be reverſed, or money paid, the bail may have audita querela.

If after judgment againſt bail the judgment againſt the principal is reverſed, or the money paid by the principal, the bail may have *audita querela*. *Cro. Jac.* 645. 8 *Rep.* 143.

If plaintiff gets judgment in audita querela, he may have reſtitution.

Where a plaintiff in *audita querela* gets judgment, he ſhall have reſtitution of his goods though taken in execotion before the writ brought. *Sid.* 74.

If founded on record or perſon in cuſtody, the proceſs muſt be ſcire facias, but if on facts or party at large, the proceſs muſt be venire facias.

If an *audita querela* is founded on a record, or the perſon bringing it is in cuſtody, the proceſs upon it is a *ſcire facias*, but if founded on matter of fact, or the party is at large, then the proceſs is a *venire*. *Salk.* 92.

Audita querela will not lie upon matters contrary to the verdict.

One *Borrow* of *Limehouſe* brought an action upon the caſe againſt *Leke*, and counted that the plaintiff did lend to the defendant a ſhip for conveying of merchandize from *Muſcovy* to parts overſea. That the defendant aſſumed, and promiſed the plaintiff to pay him ſuch a ſum, *&c.* to which the defendant pleaded *non aſſumpſit modo et forma*, and it was found, and judgment

judgment given for the plaintiff. Upon which the defendant brought *audita querela*, ſurmiſing that the ſhip was bought to the uſe of the merchants of *Muſcovy*, and none to the uſe of *Leke*, *&c.*

Shute ſecond baron: *Audita querela* lies properly when the verdict is allowed, and there is ſome matter in equity. But to have *audita querela* upon matter contrary to the verdict is ſtrange in my opinion. *Savile's Rep.* 69. *in Sccio. Mich.* 26 *Eliz.*

No coſts or damages can be given to a plaintiff on the writ of *audita querela*, *Dyer* 194. for this reaſon reliefs in equity are more ſought after, and this writ leſs known.

No coſts can be given in this action.

The proceedings againſt chief juſtice *Richardſon*, upon the *audita querela*, between doctor *Bancroft* biſhop of *Oxford*, and Sir *Edward Heron* knight of the *Bath*.

Tempore Car. 1.

To the king's moſt exellent majeſty,

The humble petition of *John Bancroft* doctor of divinity ſheweth, that whereas your petitioner lately obtained a judgment in your highneſs's court of exchequer, againſt Sir *Edward Heron*, for a debt of 2000 marks, and to his great charge procured him to be taken in execution, and that the ſaid Sir *Edward Heron* pretending matter of equity exhibited his bill into the exchequer-chamber, which after due examination of the cauſe was diſmiſſed.

Petition againſt lord chief juſtice Richardſon to make ſatisfaction for releaſing a priſoner in execution, under falſe ſuggeſtion, upon an audita querela.

Yet for all this Sir *Edward Heron* procured himſelf to be freed upon inſufficient bail taken before the right worſhipful Sir *Thomas Richardſon*, then lord chief juſtice of the common pleas, upon pretence the debt was releaſed by your petitioner, he not being called to it, nor any releaſe ſhewn, to the loſs of your petitioner's debt,

debt, the hindrance of juſtice, and apparent wrong to the jurisdiction of your highneſs's court of exchequer,

Humbly beſeecheth your moſt ſacred majeſty to be graciouſly pleaſed to ſignify your royal pleaſure, that this abuſe may be duly examined, and the ſaid lord chief juſtice (the bail being inſufficient) be injoined to ſatisfy your petitioner his due debt, damages and coſts of ſuit, as Sir *Edward Coke* being chief juſtice of the king's bench was for a leſs abuſe by your royal father of bleſſed memory cauſed to do,

And your petitioner ſhall ever pray, *&c.* The king hereupon referred it to be examined at the council board. And afterwards upon a new petition it was referred by the king to all the judges, and they were required to examine, and certify; which they did *in hæc verba.*

May it pleaſe your excellent majeſty,

In all humble obedience to your majeſty's commands, we have peruſed the three ſeveral petitions of the lord biſhop of *Oxford* referred unto us, and hereunto annexed, and have examined the contents thereof, and have heard the lord biſhop, and the lord chief juſtice and their counſel ſeveral times, and we have alſo heard Sir *Edward Heron.*

And we do humbly certify your majeſty, that we find the ſtate of the cauſe, and the proceedings thereupon to be thus:

Biſhop of Oxford as debitor domini regis had judgment againſt Sir Edward Heron on bond.

The lord biſhop of *Oxford* by the name of *John Bancroft*, doctor of divinity *debitor d'ni regis*, had a judgment in the court of exchequer, againſt Sir *Edward Heron* for 2000 marks debt, and 78*l.* 13*s.* 4*d.* for damages and coſts.

That

That this judgment was had upon a bond, wherein Sir *Edward Heron*, and ſerjeant *Bawtree* deceaſed, and *John Shotbolt* were jointly and ſeverally bound in 2000 marks, upon condition that Sir *Edward Heron*, and Mr. ſerjeant *Bawtree*, who married the ſiſter of the lord biſhop, ſhould aſſure lands of inheritance to the uſe of Mr. ſerjeant *Bawtree* himſelf, and his wife and their heirs, of the value of 100*l.* *per annum*, which lands are not aſſured; the huſband died, the wife ſurvived, and yet liveth. So the bond was forfeited.

That upon this judgment, Sir *Edward Heron* was committed in execution to the priſon of the *Fleet*, and there was actually in priſon.

And defendant was committed to the Fleet in execution.

That Sir *Edward Heron* to procure his liberty ſued out of the chancery an *audita querela*, returnable in the court of common pleas.

Who to procure liberty ſued audita querela out of chancery, returnable in the common pleas.

That in this *audita querela* by the practice of Sir *Edward Heron*, or ſome on his behalf, there was unduly omitted the expreſs mention, that the lord biſhop who was plaintiff in the court of exchequer was *debitor domini regis*, and there was untruly ſuggeſted, that the plaintiff had made a releaſe to the ſaid *Shotbolt* one of the obligors.

Debitor domini regis omitted in the audita querela, and therein a releaſe was ſuggeſted.

That the now lord chief juſtice, then chief juſtice of the common pleas, after the term ended, upon the confident affirmation of Sir *Edward Heron*, and thoſe who ſolicited for him, that

Defendant in priſon, and bail taken on audita querela on ſuch bare ſuggeſtion.

that the ſuggeſtions of the *audita querela* were true, took bail of Sir *Edward Heron*, and four ſureties with him, the principal in the ſum of 4000 marks, and each of the ſureties in 2000 marks a-piece.

No releaſe produced as ſuggeſted, nor notice to plaintiff to object.

That the lord chief juſtice ſaw no ſuch releaſe as was ſuggeſted, for in truth there was never any ſuch made as Sir *Edward Heron* himſelf confeſſed before us, nor did the lord chief juſtice call the lord biſhop or any for him before he took the bail, to hear what they could object againſt it.

The bail confeſſed themſelves no ſubſidy men, and proved inſufficient.

That the lord chief juſtice did examine the bail upon their oaths of their ſufficiency, who confeſſed that none of them were ſubſidy men, but they affirmed their abilities to be ſuch, that if their information had been true, they had been ſufficient bail. But Sir *Edward Heron* confeſſed before us, that all the bail were ſtrangers to him, and that they were all procured for him by one *Harbin* his ſolicitor in that cauſe, for a reward; upon all which we believe that the bail was inſufficient.

convenient ſatisfaction offered.

We endeavoured by mediation with Sir *Edward Heron* to have ended the difference, as your majeſty in the firſt place was graciouſly pleaſed to direct; but Sir *Edward Heron* could not be drawn by us to give any convenient ſatisfaction to the lord biſhop, but he offered to ſubmit himſelf to priſon again, or to acknowledge a new judgment in the exchequer for the like ſum, but the lord biſhop was not willing to accept thereof, both becauſe Sir *Edward Heron* was thus diſcharged from the execution, as alſo becauſe he affirmed both by his words, and by his letter to the lord biſhop, that he was of no ability which was in his own power, and

yet

yet we underſtand that between him, his wife and children they have not leſs than 1000*l.* land *per annum.*

So that we failing in the firſt part which we much deſired, by mediation to end the controverſy, do humbly certify unto your majeſty the ſtate and proceedings of this cauſe, and our particular anſwers to the four diſtinct queſtions, propounded by your majeſty upon the laſt petition commanded to be certified. The judges certify.

To the firſt we hold it in our opinions to be an error in judgment, to bail any upon an *audita querela*, who for a juſt debt is in execution at the ſuit of one who is *debitor domini regis*, in regard of your majeſty's intereſt therein. That it was an error in judgment to bail any on an audita querela, who is in execution at the ſuit of one who is debitor domini regis.

To the ſecond we hold it was not as conſiderately as it might have been, to take bail in this caſe without ſight of the releaſe ſuggeſted, and without calling the plaintiff or ſome for him to hear what could be ſaid againſt it, but we are of opinion that a bail might be taken where it concerns not the king, by the lord chief juſtice or other judge alone, at his own houſe in the vacation. And that it was inconſiderate to take bail without ſight of a releaſe ſuggeſted to be the cauſe, or without notice to plaintiff to object.

To the third, none of us have ever bailed any in the like caſe. No bail taken of the like kind.

To the fourth we conceive, that without prejudice to the caſe there mentioned, we could not certify the effect of the certificate therein mentioned: Therefore have humbly certified the copy of the certificate itſelf, as it hath been produced to us expreſſing that caſe.

And

No falſehood or corruption, in the chief juſtice.

And laſtly, we humbly certify that no falſehood or corruption hath been objected againſt the lord chief juſtice in this caſe.

All which we humbly ſubmit to your majeſty's great wiſdom and judgment.

Ball's M. S. 139.

The ſubſtance of Sir Edward Coke's *caſe.*

Defendant in priſon in caſe of piracy.

There was a ſuit in the court of *Admiralty*, between *Villiers* plaintiff and *Hawkeridge* and others defendants, in a caſe of piracy. *Hawkeridge* put in bail *de judicato ſolvendo*, and endeavoured to leave the kingdom, but that being known and complained of, *Hawkeridge* being not able to put in ſufficient ſureties for his ſtay was committed to priſon by the judge of the *Admiralty*.

Removes by habeas corpus into the king's bench, where by Coke chief juſtice he was ſet at liberty upon inſufficient bail.

Thereupon *Hawkeridge* removed himſelf by *Habeas corpus* into the *King's Bench*, and there, by an order made by Sir *Edward Coke* then lord chief juſtice of that court, was ſet at liberty upon inſufficient bail, and ſo avoided the ſuit of *Villers* for reſtitution.

Afterwards *Villers* had a ſentence in the court of *Admiralty* for his loſſes, but the bail being inſolvent he was in danger to loſe all, and therefore petitioned king *James*, complaining of ſetting at liberty *Hawkeridge* upon inſufficient bail, and deſires ſatisfaction (by his majeſty's favour) from the ſaid lord chief juſtice who bailed him.

His

His majeſty referred the cauſe to his council, and others who conferring with the other judges did certify his majeſty, and delivered it for law, having firſt noted the weakneſs of the bail: That though the lord chief juſtice was in fault, yet nevertheleſs the ſaid lord chief juſtice was not reſpondent to *Villers* for reſtitution; but was only reſpondent to his majeſty for the abuſe of his office. *Ball*'s MS. 140.

On petition to the king againſt the chief juſtice, and reference to all the judges, they certify that the chief juſtice though in fault was not reſpondent to plaintiff for reſtitution, but to the king for the abuſe of his office.

Of the writ of reſtitution.

Reſtitution is a writ which lies where a judgment, is reverſed to reſtore, and make good to the defendant in the action what he hath loſt; the court which reverſes the judgment gives upon the reverſal a judgment for reſtitution, whereon a *ſcire facias quare reſtitutionem habere non debet*, reciting the reverſal of the judgment, and the writ of execution muſt iſſue forth. 2 *Lil. Abr.* 472.

Writ reſtitution, what and in what caſes granted.

If the plaintiff hath execution, and the money is levied and paid, and afterwards the judgment is reverſed, there the party ſhall have reſtitution without a *ſcire facias*, for it appears on the record what the party had loſt and paid, but if the money was only levied and not paid; then there muſt be a *ſcire facias* ſuggeſting the ſum levied; and where the judgment is ſet aſide after execution for an irregularity there needs no *ſcire facias* for reſtitution, but an attachment of contempt if upon the rule for reſtitution the money is not reſtored. 2 *Salk.* 588.

If money levied and paid, and judgment reverſed, the reſtitution will be without ſcire facias, but if only levied and not paid, ſcire facias muſt iſſue; if judgmnt ſet aſide for irregularity, the reſtitution will be by attachment of contempt.

The writ of reſtitution is only granted where the party cannot otherwiſe be reſtored.

A writ of reſtitution is not properly to be granted but where the party cannot be reſtored by the ordinary courſe of law, and the nature of it is to reſtore the party to the poſſeſſion of a freehold, or other matter of profit, from which he is illegally removed. 2 *Lill.* 472, 473.

Where judgment for land is reverſed the party may have reſtitution of poſſeſſion.

Where a judgment for land is reverſed by writ of error, the court may grant a writ of reſtitution to the ſheriff to put the party in poſſeſſion of the lands recovered from him by the erroneous judgment, though there ought to be no reſtitution granted of the poſſeſſion of lands, where it cannot be grounded on ſome matter of record appearing to the court, and perſons that are to reſtore are to be parties to the record, or they muſt be made ſo by ſpecial *ſcire facias*. *Cro. Car.* 328. 2 *Salk.* 587.

If a leaſe is taken and ſold, and the judgment is reverſed, there the reſtitution muſt be of the purchaſe money.

If a leaſe is taken in execution upon a *fieri facias* and ſold by the ſheriff, and afterwards the judgment is reverſed, the reſtitution muſt be of the money for which it was ſold, and not the term. *Cro. Jac.* 246. *Moor* 788.

A ſheriff by elegit ſold a leaſe, and the judgment was reverſed in error; reſtitution of the leaſe was ordered, becauſe the elegit gave the ſheriff no authority to ſell.

A ſheriff extended goods and lands upon an *elegit*, and returned that he took a leaſe for years which he ſold and delivered to the plaintiff as *bona & catalla* of the defendant for the debt, and afterwards the judgment was reverſed for error; and it was adjudged that the party ſhall be reſtored to the leaſe, becauſe the *elegit* gave the ſheriff no authority to ſell the term, and therefore a writ of reſtitution was awarded. *Yelv.* 179.

The form of the writ of reſtitution will be found in the appendix.

Of

Of writs of ſcire facias.

This writ was not at the common law, but was given by the ſtatute of *Weſtminſter* 2. *cap.* 45. in perſonal actions, when debt or damages were recovered: and before, if the plaintiff had not ſued out his execution in a year and a day after his judgment, he had no remedy but by new action of debt upon his judgment, but now he hath his liberty to bring either a *ſcire facias* or action of debt as he pleaſeth. 2 *Inſt.* 469.

Scire facias given by ſtatute in perſonal actions.

A *ſcire facias* is a judicial writ and muſt purſue the nature of the judgment, ſo that where the judgment is joint the *ſcire facias* muſt be ſo too. 2 *Salk.* 598. *pl.* 1. *Trin.* 1 *W. & M. B. R. Panton* againſt *Hall*, *Carth.* 105. *S. C.* accordingly.

Is a judicial writ which muſt purſue the nature of the judgment.

By the ſame ſtatute of *Weſtminſter* this writ of *ſcire facias* was ordained in lieu of a new original, and therefore ſays *Comb.* 455. judgment thereupon ſhall have the ſame effect as upon an original.

The effect of the writ of ſcire facias, and the judgment thereupon.

There are multitudes of writs of *ſcire facias* appear upon the moſt antient rolls downwards, a few whereof are introduced to explain themſelves and their uſe in thoſe times when they were as common as any other proceſs iſſuing out of the office of pleas.

Sci. fa. a common proceſs among the moſt antient rolls.

Scire facias ſuper recogn' vic' ret' ſcire feci & judicium quod quer. h'eat execut. ſed quia compert. eſt in magno rot'lo, &c. qd. quer. tenetur regi in de plur' deb'is concordat. eſt qd. levatio deb'i pred'ci fiat ad opus regis in partem ſolut. deb'i pred'ci Et preceptum eſt vic', &c. Mich. 30 Edw. 3.

Sci. fa. on a ſheriff's recognizance.

Sci. fa. and judgment againſt the late ſheriff, and fi. fa. for the party plaintiff & cap. pro fine for the king.

Sci. fa. & Judicium verſus nuper vic. ad h'end. allocationem de denar. per vic. computat. tanquam ſolut. quer. & ill. ei non ſolvit Ideo fi. fa. verſus nuper vic. & cap. pro fine pro rege. Mich. 7 Hen. 5.

Sci. fa. againſt ſheriff to ſhew cauſe why he ſhould not ſatisfy plaintiff what he was allowed in his account, for the uſe of plaintiff, and judgment thereon.

Myners againſt *Swynerton:* Action brought by *ſcire facias* againſt the ſheriff *quare non ſatisfaceret quer. de* 9 *l. unde ipſe cepit allocac. in compo. ſuo tanquam ſolut. quer. pro quadam annuitat. ei per Regem conceſſ. percipiend. de exit' com. def. retorn. Garniſhed & non ven. & Judicium quod quer. h'eat executionem.* Trin. 3 Hen. 6.

The like.

Devon. ſſ. Sci. fa. brought by *Henry Lew* againſt the ſheriff of *Devon* to ſhew *quare non ſatisfaceret quer. de* 110*s.* parcel of 10 marks, *quas Rex conceſſit eidem Henr. percipiend. de exit. com. de quibus vic. cepit allocat' in comp'o ſuo Def. ſum. & defalt. fac. & Judicium per defalt. & def. cap. pro contemptu.* Of this kind there are great numbers of precedents. *Hil.* 12 *Edw.* 4. *ſi'le* 22 *Edw.* 4.

Writs of ſci. fa. in pl'ito deb'i.

By writ of *ſci. fa. in pl'ito deb'i* there are multitudes of precedents, and among them for Sir *John de Henningham* againſt *Gardner*, *Mich.* 32 *Edw.* 3. For the chancellor of the exchequer againſt *Broke*, ſheriff of *Surry* and *Suſſex*, *Mich.* 1 *Hen.* 4. For *Gardemelle* againſt *Pimpe*, late ſheriff of *Kent*, 1 *Hen.* 5. For *Bromflete* againſt *Sandford*, late ſheriff of *York*. For *Queldryk* againſt *Harryngton*, late ſheriff of *York*, *Venue* laid in *Lancaſhire*, *Eaſter* 9 *Hen.* 5. For *Humphrey*

phrey duke of *Glouceſter* againſt *Haſtings*, late ſheriff of *Warwick* and *Leiceſter*, 7 *Hen.* 6. For *Brigge* againſt *Corbet de Lye*, 15 *Hen.* 6. For the abbeſs of *Shaftſbury* againſt *Redmaid*, late ſheriff of *Somerſet* and *Dorſet*, *Venue* laid in *Yorkſhire*, *Trin.* 10 *Hen.* 7.

In *pl'ito deb'i per bre. un' ſcire fac.* Abbeſs of the church of *St. John of Colcheſter* againſt the men of the town of *Colcheſter*, *Trin.* 7 *Hen.* 6.

Lincoln, *ſſ.* For *Edward* prince of *Wales* againſt the prior of *Cartele per bre. de ſcire fac. Et h'et execut. per bre. de fieri fac.'* Trin. 32 Edw. 3. Writ of ſci. fa. and execution by writ of fi. fa'.

Berks, *ſſ.* Prior of *Noion* againſt the tenant of *Ade Marcell*, *Mich.* 32 *Edw.* 3. *Lincoln*, *ſſ.* *Hanley* againſt the abbot of *Nenbo. de deb. Mich.* 4 *Ric.* 2. *London*, *ſſ.* *Kelk* clerk againſt *Watton* a drover, *Trin.* 7 *Ric.* 2. *Hereford*, *ſſ.* For *Roger de Mortuo Mari* againſt *De Burle*, *Hill.* 11 *Ric.* 2. *Somers*, *Devon*, *ſſ.* the ſame againſt *Courteney* ſame term. *Devon*, *ſſ.* For *Scut* againſt *Copleſtone*, 1 *Hen.* 4. *Per breve de ſcire facias* without further diſtinction, appearing in the *repertorium*. Writs of ſcire fa. without diſtinction of the cauſe of action.

Eſſex, *ſſ.* For the prior of *Stoke* againſt the parſon of the church of *Gyſtenningthorpe de portione decime per breve de ſcire facias.* Hil. 13 Ric. 2. By ſcire facias for a portion of tithes.

De quodam bri. de ſcire fac. Yorkſhire, *ſſ.* *De Routcliff & Bulmere* againſt *De Spendale de* 24*l.* 4*s.* Eaſter 45 Ed. 3. *Worc'*, *ſſ.* *De Wych* at the ſuit of *Godman civis & ſiſſoris London de* 26*l.* *Surr'*. *Newdigate* and *Loxley* againſt *Seniclear*, knt. 1 *Ric.* 2. Of one writ ſcire fac.'

In pl'ito deb'i unde bre. de ſcire fac. Middleſex, *ſſ.* *Brewſter* and others againſt *Pentrell & al.* In debt unde bre. de ſcir. fac. againſt

the collector of the cuſtoms, and ſuch like.

& al. nuper coll. cuſt. & ſubſ. lanarum coriorum & pell' in launt. in portu civitat' London. 1 Ed. 4. *London, ſſ.* For *Gloceſter* againſt *Juge & al. nuper coll. parv' cuſtum. in portu London & in ſingulis portubus & locis eidem pertin. adjacen.* ſame term. *Berks, ſſ.* For *Kyngeſton* againſt the abbot and convent of *Reding, coll. ſcde. med. unius* 10 *me in Archid' Berks,* Hill. 1 Ed. 4. *Oxon, ſſ.* Sir *John Stourton,* knt. againſt *Senior & al. nuper balli'os ville. Oxon* ſame term. *Devon, ſſ. Mildenhale* and others againſt *Hillarſden,* Trin. 2 Ed. 4. *Middleſex, ſſ.* Earl of *Lincoln* againſt *Dimmock,* knt. late ſheriff of *Lincolnſhire.* Mich. 1 Hen. 7.

In diſcharge of debts by ſcire fac'.

De exoneratione deb'i per bre. de ſcire fac. for the king and the biſhop of *Coventry and Litchfield* againſt the archbiſhop of *York.* Hil. 3 Hen. 4.

In pl'ito tr'nſgr. & contemptus per bre. de ſcire fac. for *Cockayne* and wife againſt *Brayne* a carpenter, and others. Mich. 6 Hen. 5.

Writ of ſcire facias inrolled.

Irrotlament. br'is de ſcire facias (villa Sutht') pro Ric'o Symſon de liberat' de recordo. Eaſter 2 Ed. 4.

In debt on ſci. fa. for the king againſt a late ſheriff.

In pl'ito deb'i ſuper bre. de ſcire facias for the king againſt *Cokyn,* late ſheriff of *Bedford* and *Bucks.* Mich. 11 Hen. 7.

There are many on the rolls of repertories of theſe kinds of entries from the reign of *Edward* the firſt down to the reign of *Henry* the ſeventh, both incluſive.

Judgment and writ of error within the year, and judgment affirmed, and ca. ſa. within

Dennis againſt *Drake, Paſ.* 4. *in Sccio. Lane's Reports* 20. Debt was brought by *Dennis* againſt *Drake* ſheriff, for an eſcape; a man had judgment in the king's bench, and a writ of error was brought within the year, and after the year

year passed the judgment was affirmed in the exchequer chamber, and within a year after the affirmation a *capias* issued to the said *Drake* the sheriff, who took the party and suffered him to escape, and this being the case upon the declaration in this action, the defendant demurred; and all the barons said, that there is no question but a *capias* may well issue within the year after judgment affirmed without a *scire facias*, though it be more than a year after the first judgment; and it seemed to them, that there was no difference, though the writ of error was not brought until after the year of the first judgment given, although in such case there be an apparent neglect in the party, who had not sued his execution within the year, and therefore he was enforced to a *scire facias* through his neglect; whereas if error had been brought within the year, he had never been driven to his *scire facias* in this case; yet forasmuch as when the judgment is affirmed, this is all one as a new judgment, they conceived it made no difference; and *Tanfield* chief baron said, that it had been often so judged in the king's bench.

the year after the affirmance, good without sci. fa'.

At common law the writ of *scire facias* lay only on judgments in real actions; though it has been adjudged that it lay also in mixed actions. 2 *Salk.* 600.

Scire facias lay at common law on judgments in real and mixed actions.

If any of the writs of execution, whether in personal or real actions are not issued within a year and a day after the judgment to obtain execution, there must be a *scire facias* to shew cause why the execution should not be awarded: but if the plaintiff sueth out any of them within the year, he may continue them after the

And must issue if no execution within a year and a day after judgment.

year till he hath execution, and need not ſue out any *ſcire facias*; and a writ of error is a continuance, ſo that no *ſcire facias* is required, though it depend ſome years, and becauſe pending the writ of error the plaintiff cannot ſue out execution of the judgment though he may after the affirmation of it. *Lit.* 503. 1 *Inſt.* 290. 2 *Inſt.* 471. 2 *Lill.* 500, 504.

A writ of error is a continuance of a cauſe.

If either party die judgment muſt be revived by ſci. fa'.

If either of the parties die, execution cannot be taken out upon the judgment till a *ſcire facias* is ſued out, and judgment thereupon obtained. *Stat.* 8 & 9 *W.* 3. *cap.* 10.

Writs of ſci. fa. muſt have 15 days between teſte and return, if returned ſcire feci.

The writ of *ſcire facias* is directed to the ſheriff, and if but one iſſues, there muſt be fifteen days between the *teſte* and return thereof, and if two iſſue, there muſt be eight days between the *teſte* and return of each, which writs are to ſhew cauſe why execution ought not to be had upon the judgment, &c. and if the ſheriff cannot ſummon the defendant upon the firſt writ, but returns a *nichil habet unde*, an *alias ſcire facias* is iſſued, and a *nichil* in like manner being alſo returned thereupon, and the two *ſcire facias's* being filed and entred upon the roll of the term when the firſt writ of *ſcire facias* bore *teſte*, a rule of four days muſt be given in the book of orders for the defendant to ſhew cauſe in arreſt of judgment; and thoſe four days being expired and no cauſe ſhewn, the plaintiff may have his judgment on the 5th day upon the *ſcire facias quod habeat executionem*, &c. and then the plaintiff may have his execution in the ordinary way.

If two returned nichils they muſt have 8 days between the teſte and returns of each;

4 days rule to be given for defendant to move in arreſt of judgment; and in default judgment.

If plaintiff be hung up for a year from taking out execution by an injunction, he muſt have a *ſci. fa.*; and the court ſaid, the ſtat. *Weſtm.*

The year muſt be computed by calendar months.

Weſtm. 2. which is *infra annum*, muſt be computed by calendar months and not by terms; for it was inſiſted that taking one term inclusive, and the other excluſive, there was but four terms. *Eaſter* 6 *Geo.* 1. *Winter* againſt *Lightbound*, 1 *Str.* 301.

Sci. fa. ad cognoſcend. factum after a releaſe of a judgment.

Where a man has a verdict or judgment, and after releaſes, the defendant ſhall have *ſcire facias ad cognoſcend. factum.* Br. Scire Facias, pl. 8. cites 27 Hen. 6. 7.

After plene adminiſtravit in debt is found, if defendant has aſſets plaintiff ſhall have ſci. fa'.

Where fully adminiſtred in debt againſt executors is found with them, and after aſſets comes to their hands, the plaintiff upon ſurmiſe ſhall have *ſcire facias*; out of the firſt record to have execution of their goods. *Br. Scire Facias, pl* 12. cites 33 *Hen.* 6, 24.

If judgment above 10 years, the court muſt be moved for leave to revive.

If the judgment is above ten years ſtanding, it cannot be revived by *ſcire facias* without application to the court for leave which is a motion of courſe.

One ſci. fa. returned nichil, tho' practiſed, is not ſufficiently warranted.

One *ſcire facias* only returned a *nichil* is countenanced by ſome antient practices, but the opinion of the court ſeems wanting to ſupport the more modern practices of the like kind.

Judgment on one ſci. fa. returned nichil.

In the firſt year of the reign of *Richard* the third, judgment was obtained upon one *ſcire facias unde vic' retorn' nichil* without an *alias*, and *judicium quod quer. he'at executionem.*

Defendant's appearance being entered to ſcire facias, plaintiff proceeds to judgment by bill, &c.

If upon the writ of *ſcire facias* the ſheriff returns *ſcire feci*, and the defendant enters his appearance at the return of the writ, or within four days after; then plaintiff's attorney is to take

take a copy of the *ſcire facias*, and draw his action thereupon in form of a bill (which you will ſee in the appendix); and having delivered over the draft of the bill to defendant's attorney, to be copied by him, if the defendant pleads thereto iſſuably, the cauſe is tried as in other caſes, and verdict and judgment is obtained accordingly.

Pleadings to ſci. fa'.

The ordinary pleas to a *ſcire facias* are, a releaſe, or that there is no ſuch record; if the latter, the plaintiff replies, that there is ſuch a record, and thereupon enters the iſſue on the roll, and moves the court by counſel, for a ſhort day to bring the record into court.

The record brought into court on nul tiel record.

The day being given, the record is brought into court, and read there, and the barons having examined the record with the *ſcire facias*, and finding them to agree, judgment is given for the plaintiff.

Payment is a good plea to a *ſcire facias* by the ſtat. of 4 & 5 *Ann.* 2 *Lil. abr.* 479.

If the *ſcire facias* be againſt executors or adminiſtrators, they may plead *plene adminiſtravit*, or other matters in avoidance of the judgment.

If the *ſcire facias* be againſt the tertenants, there are divers ſorts of pleas of which the records of the court are full.

If appearance not entred in 4 days, judgment by default.

The firſt writ of *ſcire facias* being returned by the ſheriff *ſcire feci*, and the defendant's appearance not being entred within the four days, judgment may be entred for the plaintiff, in like manner as on two *ſcire facias's* returned *nichil*.

Of

Of ſcire facias *againſt bail.*

On judgment obtained, where the defendant is held to bail, and not able to ſatisfy the debt, the plaintiff's attorney iſſueth forth the writ of *capias ad ſatisfaciendum* directed to the ſheriff of the county, wherein the venue is laid, on whoſe return of *non eſt invent.* two *ſcire facias's* returned *nihils*, or one *ſcire facias* returned *ſcire feci* as aforeſaid, are iſſued againſt the bail, which writs of *ſcire facias* muſt be directed to the ſheriff of *Middleſex*, and not elſewhere, becauſe the bail is ſuppoſed to be taken at *Weſtminſter*, and is there recorded.

Scire facias againſt the bail.

Ca. ſa. muſt firſt iſſue againſt the principal, and then 2 ſcire facias's againſt the bail returned nichils, or one returned ſcire feci.

There muſt be a *capias ad ſatisfaciendum* ſued out againſt the principal, and *non eſt invent.* returned, before you can proceed againſt the bail, either by *ſcire facias* or action of debt upon the recognizance, (except in error), *Lutw.* 1273. for the bail are not bound to render the principal, till they know what execution the plaintiff will chooſe, (that is) whether he will have defendant's body, which appears by ſuing out the *ca. ſa.* or whether he will have a *fieri facias* or an *elegit*.

Bail not bound to render the principal till they know what execution plaintiff will chooſe.

If the action be brought by original, the want of fifteen days between the teſte and the return of a *capias* againſt the principal, in order to charge the bail, is not helped by the ſtatute 13 *Car.* 2. *cap.* 2.

Where action brought by original 15 days between teſte and return of ca. ſa. to charge the bail neceſſary.

There ought to be (in all caſes) at leaſt eight days between the teſte and the return of the *capias ad ſatisfaciendum* againſt the principal, and

In all caſes there muſt at leaſt be 8 days between the teſte and re-

turn, and the writ be four days exclu-ſive in the ſheriff's office.

and in order to charge the bail, the *capias* muſt be four days excluſive in the ſheriffs office. *Salk.* 599, 602. 2 *Ld. Raym.* 1177.

Writs of ſcire facias returned ſcire feci muſt be 15 days between teſte and return, and returned nichils muſt be 2 at leaſt, and 8 days be-tween the teſte and return of each, and be 4 days at leaſt in the ſheriffs office.

There muſt alſo be at leaſt fifteen days between the teſte and return of all writs of *ſcire facias* againſt the bail returned *ſcire feci*, and eight days at leaſt between the teſte and return of all writs of *ſcire facias* againſt the bail returned *nichils*, whereof there muſt be at leaſt two returned *nichils*, and each *ſcire facias* againſt the bail muſt be four days at leaſt in the ſheriff's office, and after they are returned by the ſheriff as above, the plaintiff may have his judgment againſt the bail, and execution thereupon.

If the principal ſhall render himſelf up on or before the laſt proceſs to be returned, no further proceedings againſt the bail.

By the old rules it is ordered, " That a " principal rendring himſelf at any time after " bail put in, and before, or upon the day of " appearance, of the firſt *ſcire facias* returned " *ſcire feci*, or of the ſecond *ſcire facias* returned " *nichil*, or in caſe there be an action of debt " brought upon the recognizance againſt the " bail, then if the principal ſhall render himſelf " up, on or before the proceſs returned ſerved, " no further proceedings to be againſt the bail."

Principal dying after return of ca ſa. and before taking out ſcire facias againſt the bail, the court refuſed to ſtay proceedings againſt the bail.

The principal died after the return of a *capias ad ſatisfaciendum*, and before taking out a *ſcire facias* againſt the bail; the court in this caſe refuſed to ſtay proceedings againſt them, for in ſtrictneſs of law, the bail are bound from the return of *non eſt invent.* and it is but *ex gratia* that a ſurrender after is accepted, which time they take at their peril. 1 *Rol. Abr.* 336.

2 *Ld.*

2 *Ld. Raym.* 1452. *Str.* 717. *Mod. Caſ. in Law and Equity* 31. *Cro. Jac.* 165. *pl.* 9.

If defendant dies after a *capias ad ſatisfacien-dum* ſued out, and before the return, the bail are diſcharged, but they muſt plead it. *Jones's Rep.* 136.

Principal dying after ca. ſa. ſued out, and before the return the bail are diſcharged.

If a *capias ad ſatisfaciend.* be ſued out above a year after the judgment, without reviving the judgment by *ſcire facias*, yet good to ground a *ſcire facias* againſt the bail, for they are ſtrangers, and cannot take advantage of that action in a collateral action. 2 *Ld. Raym.* 1096. *Mod.* 304. *Holt's Rep.* 90.

If ca. ſa. ſued out above a year after judgment without reviving good to ground ſcire facias againſt bail.

In *Piper* againſt *Thompſon*, *in Scio. Jan.* 27, 1726. *Scire facias* upon a recognizance againſt the bail; the *ſcire facias* reciting the record was *in hac parte*, whereas againſt the bail it ſhould have been *in ea parte*. It was moved to amend upon theſe authorities, 1 *Salk.* 51, 52. 1 *Rol. Abr.* 797. *Stat.* 8 *Hen.* 6. *cap.* 15. but was denied *per totam curiam*. 2 Salk. 599. *Hil.* 3 *An.* in *B. R. Brewſter* againſt *Wells*, *Bunb.* 228.

Scire facias on a recognizance, motion to amend for a miſpriſion denied.

Brooke and another executor, *&c.* againſt *Smith*, *in Scio. MS. Trin.* 1755, 13 *June*. On the motion of Mr. *Starkie*, hearing Mr. *Yates* alſo for the bail, and it appearing that the defendant had become a bankrupt and obtained a certificate before the iſſuing of the *ſcire facias's* againſt the bail; It was ordered, that the proceedings on the *ſcire facias's* iſſued againſt the ſaid bail be ſet aſide.

Principal becoming a bankrupt and obtained his certificate before ſci. fa.

18 *June*, In the ſame cauſe on motion of Mr. *Starkie* for the ſaid bail, and reading the above rule,

Bail diſcharged.

rule, it was ordered, that an *exoneretur* be entred for the ſaid bail.

Concerning coſts.

Wherein coſts are allowed, and where not.

Coſts are only to be paid by ſuch perſons, who by their own means have cauſed the other party to be at extraordinary charges, and no coſts ſhall be allowed for unreaſonable motions, but only ſuch as the party was unneceſſarily put unto.

No coſts for putting off a trial where no fault was.

Coſts ought not to be paid for the putting off a trial, where no fault was in the party againſt whom it is moved. 1 *Lil. Abr.* 335, 337.

Coſts not given by the common law but by ſtatute only.

By what ſtatutes.

The common law doth not give coſts in any caſe, but they are given by ſtatute: the defendant on a writ of error brought to delay execution, if judgment be affirmed, coſts are allowed. 3 *Hen.* 7. *cap.* 10. And in actions of waſte, debt upon the ſtatute for tithes, and all ſuits by *ſcire facias* for malicious treſpaſſes, *&c.* by 13 *Car.* 2. *cap.* 2.

Some coſts are doubled and trebled, and ſome conditional, that the damages amount to 40s. or the judge certifies.

By ſome ſtatutes double and treble coſts and damages are given, but in perſonal actions of treſpaſs, aſſault and battery, actions on the caſe for words, *&c.* If the debt or damages amount not to 40 *s.* or the judges do not certify that the battery was ſufficiently proved, *&c.* no more coſts ſhall be allowed than damages. 43 *Eliz. cap.* 6. 21 *Jac.* 1. *cap.* 16. 22 & 23 *Car.* 2.

Where there are ſeveral defendants in treſpaſs, aſ-

Where ſeveral are made defendants in actions of treſpaſs, aſſault, *&c.* and one or more is acquitted, all ſuch of them ſhall have coſts, unleſs

leſs the judge ſhall certify there was reaſonable cauſe for making them defendants. 8 & 9 *W.* 3. *cap.* 11.

fault, &c. and ſome acquitted ſuch ſhall have coſts unleſs the judge certifies.

It has been adjudged that the king ſhall pay coſts for an amendment, but not for not going to trial, *&c.* 1 *Salk.* 193.

The king ſhall pay coſts to amend.

By the old rules it is ordered, " That upon " a cauſe removed by *habeas corpus* out of an " inferior court (having juriſdiction of the " cauſe), if the judgment be given for the " plaintiff, the coſts below are to be conſidered " and caſt into the judgment, and if for the " defendants, the charges for putting in bail."

The coſts below on removal by habeas corpus in what meaſure allowable.

Eaſter 7 *W.* 3. 4 *May*, it is ordered, " That " no coſts ſhall be taxed in ejectment, unleſs " the rule to confeſs leaſe, entry and ouſter be " entred.

No coſts in ejectment unleſs the rule to confeſs be entred.

As other determinations have prevailed in the other courts of *Weſtminſter-hall*, this rule it is hoped will recieve ſome future amendment.

Upon a motion that *T.* might pay coſts for not moving according to notice (which was denied by the whole court), it was ſaid by one of the barons, that if there are three notices of motion given, and after a fourth notice given, they ſhall not move upon the fourth without paying coſts of the three firſt. *Tarcut* againſt *Trevit*, *Nov.* 15, 1721. *Bunb.* 86.

Coſts for not moving according to notice.

Treſpaſs; verdict for the plaintiff *quoad tranſgreſſion' cum averijs & ſepium & fenſurarum fraction' proſtration' & divulſion'*, that the defendant was guilty, and a penny damages. The judge who tried the cauſe had not certified as the

Treſpaſs, where no more coſts than damages.

the *ſtatutes* 22 & 23 *Car.* 2. *cap.* 9. *ſect.* 136. and 8 & 9 *W.* 3. *cap.* 10. *ſect.* 4. direct; and now it was moved, that the defendant ſhould have no more coſts than damages, here being no word which amounts to an aſportation, nor any voluntary treſpaſs certified, and *divulſion'* did not in itſelf import either; and of that opinion were the court; and the plaintiff had but one penny coſts. *Bunb.* 167. *Mitchel* againſt *Soaper*, *May* 18, 1724. 2 *Vent.* 48, 215. 5 *Mod.* 74, 315. *Salk.* 193. *Raym.* 487. *Sir Tho. Jones* 232. *Comb.* 420.

Treſpaſs whether more coſts than damages.

In *Reeves* againſt *Butler*, *Jan.* 29. 1725. This was an action of treſpaſs *quare domum & horreum fregit, & bona & catalla, &c. cepit & detinuit & deprivavit quer' de uſu horrei & domus & bonorum, &c.* verdict for the plaintiff and twopence damages.

This caſe was argued in *Michaelmas* term 1724. by Mr. *Owen* for the plaintiff, and Mr. *P. Ward* for the defendant, and the ſingle queſtion was, whether the plaintiff ſhould have more coſts than damages.

Lord chief baron *Eyre* thought that the plaintiff was intitled to full coſts; *Price*, *Page* and *Gilbert* barons doubted; ſo it was adjourned to be further conſidered.

And after time taken, *Gilbert* being now lord chief baron, gave the opinion of the whole court this day, and went over all the ſtatutes relating to coſts, as the ſtatutes of *Glouceſter* 43 *Eliz. cap.* 6. 21 *Jac.* 1. *c.* 16, 17. 16 *Car.* 2. *c.* 8. and upon comparing and conſidering them, founded his opinion upon this diſtinction, which the court agreed to, *viz.* Where an action of treſpaſs is brought *quare clauſum fregit*, and there

is any thing laid by way of aggravation of damages, (as in the preſent caſe), there can be no more coſts than damages, though the freehold might come in queſtion, unleſs the judge certifies; but if there are ſeparate and diſtinct counts, and entire damages are given, there the plaintiff ſhall have his full coſts, even without a certificate. If a plaintiff in treſpaſs counts of a *clauſum fregit*, and another counts *de bonis aſportatis*, if the defendant is found Not guilty as to the laſt count, and Guilty as to the *clauſum fregit*, then the plaintiff ſhall have no more coſts than damages. *Bunb.* 207.

Inter Gilmyn quer' & Fawconer defend. ſur eſcape vered' cum pro quer' & dampn. aſſeſſ. per jur' & poſtea cur' dat increment' dampn' quia jur. deder' nimis ſuffic' dampn' in Mich. 6 Hen. 4. Increaſe of damages firſt given by the court.

Of writs of error in the exchequer chamber.

Where matters of error ariſe, or as is more frequent, where the defendant finds it of conſequence to delay the execution upon a judgment, he takes out a writ of error which is returnable in the exchequer chamber, agreeable to the ſtatute of 31 *Edw.* 3. *cap.* 12. which giveth this writ. Writ of error how to be obtained.

The ſubſtance and ſenſe of that ſtatute will be found in the writ which is inſerted in the appendix.

No fine, common recovery, or judgment in any real or perſonal action, ſhall be reverſed for error, unleſs the writ of error be brought and proſecuted with effect within twenty years. *Stat.* 10 & 11 *W.* 3. *cap.* 14. Within what time a writ of error muſt be brought.

The lord chancellor and treaſurer's warrant on the writ of error directed to the barons and not to the treaſurer and barons who have the record in their cuſtody, abates the writ.

In an information of intruſion in the exchequer *Hil.* 25 *Eliz. coram baronibus* againſt *Brace*; judgment was given for the queen againſt *Brace*, who brought a writ of error directed to the lord chancellor and lord treaſurer, and they made a warrant under their ſeals to the barons, to bring the record before them; and *Manwood* chief baron objected againſt both the writ and the warrant, for that the *ſtat.* 31 *Ed.* 3. *cap.* 12. that giveth this writ of error is general, that the lord chancellor and lord treaſurer ſhall cauſe to come before them, the record and proceſs of the exchequer, and inaſmuch as no ſpecial writ was given by the ſtatute, therefore the writ ought to be directed to them that have the keeping of the record, according to the courſe of the common law: and for that the treaſurer of the exchequer and barons have the keeping of the records of the exchequer, the writ of error ought to have been directed to them, and that the lord chancellor and lord treaſurer of *England* are judges in this caſe, and not the treaſurer of the exchequer. And upon ſearch of precedents, all the writs of error from the making of the ſtatute until 7 *El.* were directed to the treaſurer of the exchequer, and barons to bring the record before the lord chancellor and lord treaſurer. But in 7 *El.* and ſince, divers writs have been directed as this writ was, *&c.* but it was reſolved by the lord chancellor, lord treaſurer, and the two chief juſtices aſſiſtants, that the writ ought to be directed to the treaſurer of the exchequer, and barons that have the record in their cuſtody, according to the antient courſe and precedents, and thereupon this writ abated. Sir *William Pelham*'s caſe; ſee *lib.* 1. *fo.* 11.

Here

Here four things are to be obſerved; 1. That albeit the barons, as hath been ſaid, are the ſole judges, yet the treaſurer of the exchequer is joined with them in keeping of the records, whereof the barons are judges, for they are parcel of the king's treaſure. 2. That writs of error are to be directed to them that have the cuſtody of the record wherein any judgment is given; as a writ of error to reverſe a judgment in the court of common pleas, ſhall be directed to the chief juſtice only who hath the cuſtody of the body of the record wherein the judgment is given, but the original writ and warrant of attorney are not in his cuſtody. 3. That albeit the lord treaſurer is alſo treaſurer of the exchequer, yet the writ of error is directed to him as treaſurer of the exchequer; and the barons to have the record before himſelf as treaſurer of *England*, and the chancellor. 4. That at the making of the ſtatute of 31 *Ed.* 3. that giveth the writ of error, the offices of treaſurer of *England*, and the treaſurer of the exchequer were in ſeveral hands, as by the writs of error brought ſoon after appeareth. Before the ſaid ſtatute of 31 *Ed.* 3. the errors in the exchequer were ſometimes examined in parliament, and ſometimes before commiſſioners by force of the king's writ under the great ſeal. *Pat.* 18 *Ed.* 3. *n.* 40. *&c. Vide* 1 *R.* 2. *nu.* Sir *William de la Pool*'s caſe. *Mich.* 33 *&* 34 *Ed.* 1. *coram Rogero de Hegham & aliis juſticiariis, &c.*

It was petitioned in parliament in 22 *Ed.* 3. *nu.* 25. that erroneous judgments in the exchequer might be reverſed in the king's bench, but it ſucceeded not.

Petition in parliament that erroneous judgment in the exchequer may be reverſed in king's bench without ſucceſs.

Other judges called into the exchequer to examine the errors in the record there.

Vide term *Paſch.* 14 *Ed.* 3. a writ directed to the treaſurer and barons calling to them ſuch juſtices as they ſhould think fit, to examine the record, *&c.* of the judgment in the exchequer, *&c.* for the counteſs of *Kent* againſt the abbot of *Ramſey*, upon which judgment the abbot brought his writ of error: *Fitzherbert* for another purpoſe abridgeth the caſe, tit. *Scire Facias* 122.

Hil. 11 *Ed.* 3. *in libro Rubeo in Scaccario, fo.* 322. The caſe of *John de Leceſtre* chamberlain of the exchequer, a notable precedent to the like effect, *lege quia optime.* See 4 *Inſt.* 105.

The exchequer chamber was antiently called the council chamber.

Nota; In the act of 31 *Ed.* 3. that is called the council chamber, which now is called the exchequer chamber, becauſe there was the aſſembly of all the judges, being the king's council for deciding of matters in law.

A precipe muſt be made on applying for the writ of error.

On making application for the writ, the ſolicitor muſt prepare a *precipe* of the county, and parties names and additions, and the cauſe of action and return, and carry the ſame to the curſitor for that county who makes out the writ, for which he is paid 18*s.* 6*d.*

Day of adjournment of errors.

The return day, or day of adjournment, have uſually been the ſecond *Tueſday* in each term, but that depends on the Lord chancellor's laſt adjournment.

The writ is taken from the curſitor to the lord chief baron's clerk, to whom (the chief baron having ſigned his allowance) is paid his lordſhip's fee of 19*s.* 4*d.*

In what caſes bail is required.

If the action be in debt, in dower, in ejectment, or for an eſcape, or after a verdict, the defendant (now become plaintiff in error) muſt enter into a recognizance (the form of which is inſerted

inſerted in the appendix) ſubject to the following rules.

Trin. 1733. " It is ordered, that all writs of error ſhall without delay be delivered to one of the clerks of the lord chief baron of this court for the time being, in order to be allowed according to the practice of this court, and that no perſon ſhall be hindred from ſuing out execution under pretence of any writ of error before ſuch writ of error be ſo allowed, and notice thereof given to the plaintiff in the action, or his clerk in court; and in caſes where ſpecial bail is required, if the plaintiff in ſuch writ of error do not within four days after the allowance thereof put in bail according to law, the defendant in error may proceed to execution notwithſtanding ſuch writ of error; and if the bail ſo put in ſhall be excepted to, and notice of ſuch exception ſhall be given in writing to the attorney or clerk in court for the plaintiff in error in term time, ſuch bail ſhall be perfected and juſtified within four days after notice ſo given of ſuch exception, or the defendant in error may in default thereof proceed to execution notwithſtanding ſuch writ of error; but where notice of ſuch exception ſhall be given in vacation time, then ſuch bail ſhall be perfected and juſtified upon the firſt day of the ſubſequent term, unleſs the defendant in error, his attorney or clerk in court ſhall conſent to a juſtification before one of the barons; in which caſe ſuch bail ſhall juſtify themſelves before a baron within four days after notice of ſuch exception given in writing to the plaintiff in error, " his

Execution may go till writ of error allowed.

Where bail is required to be put in, to be in four days after allowance of writ.

Bail to be perfected in four days after exception, if in term or firſt day of next term, if no conſent to perfect at a baron's chambers.

" his attorney or clerk in court; and in default
" of ſuch juſtification, the defendant in error
" may proceed to execution notwithſtanding
" ſuch writ of error: but it is further ordered,
" that where bail ſhall be put in upon any writ
" of error, and notice thereof ſhall be given
" in writing as aforeſaid, if the defendant in
" error ſhall not except thereto, and give no-
" tice of ſuch exception in writing to the attor-
" ney or clerk in court for the plaintiff in er-
" ror, within twenty days after notice ſhall
" have been ſo given of putting in of ſuch
" bail, that then ſuch bail ſhall become abſo-
" lute, and no exception ſhall be afterwards
" taken to the ſame."

If no exception within 20 days, ſuch bail ſhall become abſolute.

Eaſter 33 *Geo.* 2. " It is ordered, That in
" caſes where ſpecial bail is required on writs
" of error, if the bail of the plaintiff in error
" is obliged to juſtify, there the ſaid bail ſhall
" each of them juſtify himſelf in double the
" ſum recovered by the judgment, on which
" the writ of error is brought, except where
" the penalty of a bond or other ſpecialty is
" recovered by ſuch judgment; in which caſe
" each of the bail ſhall juſtify in ſuch penalty
" only, and alſo except in caſes of ejectments
" where (if bail ſhall be put in upon the writ
" of error) each of ſuch bail ſhall juſtify in
" double the improved annual rent or value of
" the manors, meſſuages, lands and tenements
" recovered in ſuch ejectment."

Juſtification in double the ſum recovered, &c.

When the recognizance is ingroſſed on parch-
ment upon a double five ſhilling ſtamp, and
the parties all preſent before the lord chief ba-
ron, the recognizance is read, and the lord ch.
baron demandeth of the parties if they are wil-
ling to enter into ſuch a recognizance with con-
ditions

Of taking the recognizance.

ditions as therein mentioned, whereupon they ſubſcribe their names at the foot of the recognizance in his preſence in teſtimony of their conſent, whereupon his lordſhip ſigns the caption and delivers the recognizance (in the form you will ſee in the appendix) to the attorney for the plaintiff in error, and if there be execution iſſued, his lordſhip adds at the foot of the recognizance Let there be a ſuperſedeas.

In ſuch caſe before the execution executed a ſuperſedeas iſſues purſuant to the chief baron's directions, the form of which is inſerted in the appendix.

In writs of ſuperſedeas the clauſe of Et habeas ibi hoc breve to be omitted, and why.

In all writs of ſuperſedeas, the clauſe of (*Et habeas ibi hoc breve*) which is inſerted in all other writs is left out, becauſe the ſheriff muſt keep this by him as a charge from the court, in diſcharge of himſelf for not executing the writ ſuperſeded.

Sheriff may return execution, executed prior to writ of error allowed.

But the ſheriff may return an execution, executed prior to the allowance of the writ of error. *Salk.* 322.

The fees to be paid are for inrolling the writ of error 13*s.* 4*d.* to the warden of the *Fleet*, if in town, 2*s.* 4*d.* ſuperſedeas 6*s.* 2*d.*

To the chief baron for the caption 6*s.* 8*d.* and for the ſuperſedeas 6*s.* 8*d.* and to his clerk 2*s.* on each to the attornies on the writ of error 6*s.* 8*d.*

Wherein error will be compleat without bail.

If the action be not in debt, dower, ejectment for an eſcape, or after a verdict, no recognizance can be required, but the writ of error will be compleat without it when allowed by the chief baron.

Proceedings on the writ and recognizance.

When the writ of error and recognizance is allowed as above, the attorney muſt carry the writ to the office, and there enter it on the roll, whereupon the maſter is paid 6*s.* 8*d.* for the entry, and 4*s.* 4*d.* for entring the recognizance.

The entry on the roll as to the writ muſt be entred *verbatim*, under the judgment roll, that the attorney for the defendant in error may not preſume to take out execution till the judgment be affirmed on the writ of error, and as to the recognizance that muſt be entred upon a ſeparate roll and filed among the records of the term wherein the ſame was taken.

Uſe of recognizance.

The uſe of the recognizance is, that the plaintiff on the judgment, in caſe it be affirmed, may take out his writ of *ſcire facias* upon this recognizance, againſt the parties, who are become bound thereby, in order to recover of them the debt and coſts as well on the judgment as on the writ of error.

What to be done after writ of error.

But to return to the writ of error after the allowance and entry as aforeſaid, the attorney for the plaintiff in error muſt carefully peruſe the proceedings, and take copies thereof for the advice of counſel thereupon without loſs of time, in order to be prepared with a draft of the errors upon the day when the writ is returnable, that the plaintiff in error may not be nonproſed.

Aſſigning errors.

The uſual courſe for the plaintiff's attorney in error is to aſſign the general error, but be they general or ſpecial errors aſſigned they muſt be ingroſſed and ſigned by counſel, and when the lord chancellor is come up, the writ of error being read, the counſel opens them (not having

having before acquainted the defendant in error what errors had been assigned).

In the appendix you will find the general error, and some special errors assigned by way of precedent.

When the plaintiff in the writ of error hath assigned his error, he must transcribe the roll of the judgment fairly on a paper with a large margin, and wrote wide, and when transcribed, he must have ready with the writ of error to shew, and read to the lords if required, at the day when the writ of error is returnable, and this custom hath been very ancient; for the record of the judgment itself is not brought before them without a special command, and order of court, the form of which transcript is inserted in the appendix. Transcribing the judgment.

There is no delay permitted on the proceedings in error, rules to alledge diminution, and such like unnecessary delays, having scarcely been known in this office. No delay permitted on their proceedings.

Being thus prepared at the day when the writ of error is returnable, the attornies for each party must attend in the exchequer-chamber for the coming of the lord chancellor and lord treasurer (if such there be), and the chief justices of both benches with the barons of the exchequer, and if the lord chancellor come not (there being no lord treasurer) the errors are adjourned. If the lord chancellor not present on the error day, the errors must be adjourned.

By the statutes of 31 *Eliz.* & 16 *Car.* 2. "The not coming of the lord chancellor and "lord treasurer shall be no discontinuance of "writs of error, and by the statute of 20 *Cha.* 2. "judgment may be given in presence of the "lord keeper of the great seal, notwithstanding "the vacancy of a lord treasurer, in such man- But he may proceed notwithstanding there is no treasurer while in commission.

"ner

" ner as hath been accuſtomed when there " were preſent the ſaid two great officers."

The method of proceedings on the error days,

If the defendant in error is adviſed that the judgment is erroneous, and therefore will not appear, and plead to the errors aſſigned, the lord chancellor being preſent with the two chief juſtices and barons, will on the motion of the counſel for the plaintiff in error award a writ of *ſcire facias ad audiendum errores* returnable at a certain time limited by his lordſhip, (which writ is inſerted in the appendix) and if a *ſcire feci* is returned upon it, or two *nichils* are returned upon an *alias ſcire facias*, which amount to the return of a *ſcire feci*, and the ſaid defendant will not appear and plead, or if he does thereupon appear and plead *in nullo eſt erratum*, the cauſe muſt be put in the paper, and the lord chancellor being aſſociated as aforeſaid, will upon the motion of the ſaid plaintiff's counſel reverſe the judgment, ſo appearing to be plainly erroneous as aforeſaid.

in nullo eſt erratum to be pleaded.

But where the defendant in error is ſatisfied that there is no error in the judgment, it is moſt uſual, and the moſt adviſeable way for him to appear, and plead *inſtanter* to the errors aſſigned *in nullo eſt erratum*, whereupon the lord chancellor proceeds to the examination of the errors, and finding them frivolous may moſt probably affirm the judgment the ſame day.

Memorandums uſually made on the back of the proceedings of what is done in court, that the entries may be made right.

It has been uſual to make a memorandum of ſuch orders as the lord chancellor ſhall make in favonr of the plaintiff in error, and of the day when, *&c.* on the back of the ingroſſed errors, or if judgment of affirmance, or any order in favour of the defendant in error, is given or made, it has been alſo uſual to make a like memorandum of ſuch judgment of affirmance or order,

order, and of the day when, *&c.* under the ingroſſed plea of *in nullo eſt erratum*, that the entries in all caſes may be made right.

The errors argued before the two chief juſtices who report the ſame to the lord chancellor, who affirms or reverſes according to their report.

Where the plaintiff in error ſignifies his intentions to argue the errors as material, it has been the courſe for many years for the lord chancellor to refer the cauſe to the two lords chief juſtices who hear it argued by counſel on both ſides once or oftner as they think proper; and when they are agreed, they report their opinion to the lord chancellor, who affirms or reverſes the judgment according to their report, and his lordſhip hears no argument, unleſs they differ in opinion.

If no errors aſſigned on the return of the writ, defendant in error may by motion pray for a nonpros.

If the plaintiff in error do not put in his writ, and aſſign his errors on the day of the return, the defendant in error may by his counſel pray a *nonpros* which will be ordered by the lord chancellor (being aſſociated as aforeſaid) accordingly.

And on the affirmance of judgment, the defendant in error will have coſts to be allowed by the lord chancellor.

In every judgment affirmed upon a writ of error, the attorney for the judgment muſt draw up a bill of the coſts occaſioned by the writ of error, and the ſubſequent proceedings thereupon, and add thereto the legal intereſt of what was recovered by the judgment, to be computed from the day of ſigning the judgment, to the day on which the judgment was affirmed, and the lord chancellor has uſually made liberal allowances on this occaſion to make good the loſs, the plaintiff has ſuſtained by reaſon of the delay of execution; the fee for the lord chancellor's *allocatur* to the bill of coſts is 20*s.*

Court moved for defendant in error to have intereſt of the damages from the

Holroi and *Ebizſon B. R.* Action was brought in the court of common pleas, upon ſeveral promiſes, judgment by default, writ of inquiry

time of the judgment pending the writ of error allowed him over and above his coſts; reſolved that he ſhould not.

quiry executed, and 424*l.* damages given; error brought into the court of *B. R.* plaintiff in error *nonproſed:*

The court was moved in *Hilary* term the 1ſt of *Geo.* the 1ſt, upon 3 *Hen.* 7. *cap.* 10. that the defendant in error ſhould beſides his coſts have intereſt allowed him for the ſum adjudged due to him, pending the time of the writ of error, from the judgment.

Afterwards in *Trinity* term *Parker* chief juſtice delivered the opinion of the whole court, that the defendant, upon a writ of error, brought into *B. R.* ſhould not have intereſt allowed him, by way of damages, for the ſum adjudged due to him, from the time of the firſt judgment pending the writ of error.

All intereſt reputed unlawful in the time of Hen. 7.

For at the time of making the ſtatute 3 *Hen.* 7. *cap.* 10. which gives the writ of error, all intereſt was reputed unlawful, and therefore that ſtatute could not give it.

In fact when intereſt run higheſt as at 10 *per cent.* intereſt has not been allowed.

In writs of error brought into the exchequer-chamber, intereſt never allowed, and an uniformity in practice to be wiſhed, and endevoured. *Caſes in Law and Equity* during the earl of *Maclesfield*'s time, called *Lucas's Reports. Hil.* 1 *Geo.* 1. 274.

And in a better manuſcript report of this caſe wherein it is called *Holroid* and *Ibbetſon*, it was held by the court of king's bench, upon ſearch of precedents, and great conſideration, that no intereſt ought to be allowed in ſuch a caſe, becauſe it appeared by precedents in queen *Elizabeth*'s time, when intereſt was at 10 *per cent.* that the damages *pro dilatione executionis* were but 4*l.* though the judgment was for 400*l.*

and

and it could never be the intent of the makers of the ſtatute of 3 *Hen.* 7. *cap.* 10. to include intereſt in the word damages, becauſe when that ſtatute was made all intereſt was unlawful.

When the judgment is paſſed upon the errors, and all due entries are made, the writ of error, the tranſcript of the record, the errors aſſigned, and pleadings thereupon with the writs of *ſcire facias* (if ſuch there be) ſhould be filed altogether in the office, for the uſe of poſterity. The proceedings to be filed.

Trin. 12 *James*, *Stafford* againſt *Peters*; this was a ſpecial action upon the caſe on promiſes tried in *London* on the general iſſue, and a verdict found for the plaintiff, ſix writs of error were brought upon this judgment, and ſpecial errors were aſſigned upon one, and a *ſcire facias* was awarded *ad audiend' error'*, and after ſeveral continuances the judgment was affirmed; ſee the entry in the appendix. Judgment in caſe affirmed after 6 writs of error, and ſpecial errors aſſigned on one.

Trin. 41 *Eliz. Beecher* againſt *Shirley* knight; this judgment was reverſed on a writ of error. Judgment reverſed in error.

Eaſter 31 *Eliz. Mood* againſt *Errington*; the like reverſal in error.

Edwards againſt *Price*, and *Blakeway* in error. The defendants obtained judgment in ejectment, in *Michaelmas* term 1732. Whereupon *Edwards* brought his writ of error, returnable in the exchequer-chamber, and afterwards filed his bill in the equity ſide of this court, and for want of an anſwer obtained an injunction, and the defendant in equity, and in error having ſoon afterwards put in their anſwers in equity, the court upon the exceptions to their anſwers, continued the injunction. Rule of court to affirm the judgment on the writ of error notwithſtanding an injunction in equity.

The defendants in error thereupon moved the court of exchequer, for leave to proceed in

the exchequer-chamber, in order to get their judgment affirmed on the writ of error, notwithſtanding the injunction which was ordered on terms, that no executions ſhould iſſue till the injunction was diſſolved.

After writ of error non-pros'd in exchequer-chamber, and writ of error brought returnable in the houſe of lords, court of exchequer moved that plaintiff in error may tranſcribe the record, and aſſign his errors in parliament in eight days, or execution may iſſue.

Simmons againſt *Jenner* in error. The defendants in error obtained a judgment, in caſe on promiſes by inquiſition in *Mich.* 1 *Geo.* 2. and in *Eaſter* term following, the judgment was affirmed in error in the exchequer-chamber by judgment of *nonpros*, for want of proſecuting the ſaid writ. The plaintiff in error afterwards brought a writ of error returnable in parliament, but not tranſcribing or otherwiſe proceeding thereupon; the defendant in error, during the ſitting of parliament moved the court of exchequer, that unleſs the plaintiff in error tranſcribed the record, and aſſigned his errors in parliament, the defendant *Jenner* might be at liberty to take out execution on his ſaid judgment, and affirmance thereof in the exchequer-chamber; which was ordered accordingly, and for want of ſuch proceedings in the houſe of lords, execution was iſſued purſuant to the ſaid rule, without further motion.

But no coſts in this caſe, and why.

But in this caſe the defendant can have no coſts, for the court in which the judgment is recovered cannot give coſts, becauſe it is gone from them, and the houſe of lords cannot give coſts, becauſe the record is not before them; but if the record is tranſcribed, and the judgment affirmed in the houſe of lords, then the defendant in error will have his full coſts given in one groſs ſum by the judgment of the houſe of lords on ſuch affirmance.

Between

Between *Houghtan* plaintiff, and *Ward* defendant. Judgment for the plaintiff, and writ of error brought and continued thus: *ad quam quidem menſem predictus quer ven' coram prefat' baron' hic in propria perſona ſua & pet' execut' verſus prefat' def. pro 7 l. pred' pred'co breve de err' non obſtant' Et ſuper hoc quia videtur cur' predict' prefat' def. pred breve de err' mi'e proſecut'fuiſſe cum effectu prout debuiſſet, &c. J'o conſid' eſt per eoſdem barones quod predict' quer' habeat executionem verſus prefat' def. pro 7 l. predict', &c. Paſ. 3 Edw. 4.* Execution ordered by the barons, the writ of error not being proſecuted as it ought.

Inter Quarles and *Auſten*, judgment for the plaintiff for 30*l.* on bond, whereupon a writ of error was brought, notwithſtanding which an execution was awarded by the court for the inſufficiency thereof. *Trin.* 19 *Hen.* 8. Execution awarded by the inſufficiency of the writ of error.

Inter Seynole and *Joyner*, the defendant brought a writ of error, aſſigned error, and *ſcire fa's* were returned, and defendant *comperuit & breve adjorn' ad duas ſeparales dies & poſtea def. pet' quod recordu' remittatur & judiciu' quod recordu' remittatur ad execut' fac' eo quod quer' non eſt proſ' cum effectu. Trin.* 31 *Hen.* 6. Judgment on error non-proſs'd, and record remitted after errors aſſigned, and appearance, ſcire facias, and 2 ſeveral adjournments.

Eboram Recogn' ſuper breve de error' capt' in camera Sccij inter Fitzwilliams mil' & Wentworth mil'. Eaſter 3 *Hen.* 7. Recognizance on a writ of error.

Of writ of error in parliament.

If the defendant in the original actions is ſtill diſſatisfied, and is adviſed that there ſtill is error, or as is moſt generally the caſe, the ſaid defandont is ſtill deſirous of delaying the execution, and of putting off the evil day, he may have Writ of error in parliament to be obtained as that in the exchequer-chamber,

have a writ of error returnable before the king in parliament.

The ſaid defendant's ſolicitor for this purpoſe, muſt again apply to the curſitor for the ſame county with a like precipe as was done for a writ of error returnable in the exchequer-chamber, and the curſitor makes out this writ returnable in parliament; the form whereof will be found in the appendix: the curſitor is paid for this writ 18*s.* 6*d.*

The *allocatur* and recognizances are *mutatis mutandis* the ſame, and they alike depend on the cauſe of action, and nature of the judgment.

If the plaintiff in error be privileged, and does not tranſcribe, the defendant in error may petition.

If the plaintiff in error be privileged, and does not tranſcribe the record, the defendant in error may petition the lords, who upon ſuch petition will order the plaintiff in error to bring the record before them by a limited time, and in default thereof they will order the court below to *nonpros* the writ of error, and to award execution on the judgment.

Among the ſtanding orders of the houſe of lords are the following:

9 *December* 1670. "For as much as upon "writs of error returnable in this high court of "parliament, the plaintiffs therein often deſire "to delay juſtice rather than come to the de- "termination of the right of the cauſe: it is "therefore ordered, that the plaintiffs in all "ſuch writs, after the ſame and the records "be brought in, ſhall ſpeedily repair to the "clerk of the parliament, and proſecute their "writs of error, and ſatisfy the officers of this "houſe their fees juſtly due unto them by "reaſon of the proſecution of the ſaid writs of "error, and the proceedings thereupon, and

Writs of error to be proſecuted ſpeedily,

"further

" further ſhall aſſign their errors within eight " days after the bringing in of ſuch writs, with " the records; and if the plaintiff make de- " fault ſo to do, then the ſaid clerk, if the de- " fendant in ſuch writs require it, ſhall record, " that the plaintiff hath not proſecuted his writ " of error, and that the houſe doth therefore " award that ſuch plaintiff ſhall loſe his writ, " and that the defendant ſhall go without day, " and that the record be remitted; and if any " plaintiff in any writ of error ſhall alledge di- " minution, and pray a *certiorari*, the clerk " ſhall enter an award thereof accordingly, and " the plaintiff may before *nullo eſt erratum* " pleaded, ſue forth the writ of *certiorari* in " ordinary courſe without ſpecial petition or " motion to this houſe for the ſame; and if " he ſhall not proſecute ſuch writ, and procure " it to be returned within ten days next after " his plea of diminution, put into this houſe, " then unleſs he ſhall ſhew ſome good cauſe to " this houſe for the enlarging of the time for " the return of ſuch writ, he ſhall loſe the be- " nefit of the ſame, and the defendant in the " writ of error may proceed as if no ſuch writ " of *certiorari* were awarded."

and the errors to be aſſigned in 8 days,

in default, the record to be remitted,

if diminution alledged by plaintiff in error, he may ſue forth certiorari without petition or motion,

and if certiorari be not returned in ten days after diminution,

nor cauſe ſhewn for enlarging it, defendant may proceed as if no certiorari was awarded.

14 *February* 1694. " That no petition which " relates to the re-hearing of any cauſe, or part " of a cauſe formerly heard in this houſe, ſhall " be read the ſame day that it is offered, but " ſhall lie upon the table, and a future day be " appointed for reading thereof after twelve of " the clock."

19 *April* 1698. " The houſe taking notice, " That upon appeals and writs of error there " has been of late ſeveral ſcandalous and fri- " volous printed caſes delivered to the lords of

That no petition ſhall be read the ſame day.

" this houſe; for preventing whereof for the fu-
None to deliver printed caſes, unleſs ſigned by counſel in the cauſe.
" ture, It is this day ordered, That no perſon
" whatſoever do preſume to deliver any printed
" caſe or caſes to any lord of this houſe; un-
" leſs ſuch caſe or caſes ſhall be ſigned by one
" or more of the counſel who attended at the
" hearing of the cauſe in the courts below, or
" ſhall be of counſel at the hearing in this
" houſe."

22 *December* 1703. " Upon conſideration of
" the great inconveniences ariſing by motions
" and petitions for putting off cauſes after days
If day appointed for hearing the errors, not to be altered but upon petition, and two days previous notice.
" have been appointed for hearing thereof; It
" is ordered that when a day ſhall be appointed
" for the hearing any cauſe, appeal or writ of
" error argued in this houſe, the ſame ſhall not
" be altered but upon petition, and that no
" petition ſhall in ſuch caſe be received, unleſs
" two days notice thereof be given to the ad-
" verſe party, of which notice oath ſhall be
" made at the bar of this houſe.

21 *February* 1717. " That in all caſes upon
" writs of error depending in this houſe, where
" diminution ſhall be at any time alledged, and
Certificate to be given by the clerk of the parliament of diminution, and certiorari awarded.
" a *certiorari* prayed and awarded before *in*
" *nullo eſt erratum* pleaded; the clerk of the
" parliament ſhall, upon requeſt to him made,
" give a certificate, that diminution is ſo alledg-
" ed, and a *certiorari* prayed and awarded
" thereupon."

13 *July* 1726. " That all perſons, who ſhall
All writs of error to be brought to the lords in 14 days after the firſt day of the ſeſſion, and none to be received after,
" have any writ of error to be exhibited to this
" houſe, do bring in their ſaid writs of error
" within fourteen days to be accounted from
" and after the firſt day of every ſeſſions or
" meeting of parliament after a receſs, after
" which time the lords do declare they will du-

" ring

" ring every ſuch ſitting receive no writ, unleſs " upon a judgment given in any of his ma- " jeſty's courts of *Judicature*, whilſt the par- " liament is actually ſitting, in which caſes the " party who ſhall find himſelf aggrieved, may " bring his writ of error within fourteen days " after ſuch judgment is given."

unleſs within 14 days after judgment ſigned.

In caſe the plaintiff in error is not privileged by parliament; the defendant in error may ſoon after the parliament meets, move the court of exchequer, that unleſs the plaintiff tranſcribes the record, and carries the ſame up to the houſe of lords within eight days, that the defendant in error may have liberty to ſue out execution upon his former judgment, which is an order of courſe; and if the record is not tranſcribed by the time given by the court, the defendant in error may ſue out execution without ſtaying the fourteen days after the parliament ſits.

Where plaintiff in error is not privileged the defendant may ſoon after meeting of parliament move the court of exchequer to ſue out execution, if errors not tranſcribed in 8 days.

If the plaintiff in error reſolves to tranſcribe the record; the tranſcript is fairly ingroſſed on fair paper with a large margin, and wide wrote, and when tranſcribed the attorney carries it to the deputy-clerk of the pleas, who examines the tranſcript with the record, and underwrites his *examinatur*, and the attorney thereupon takes it to the chief baron, who having indorſed the return on the writ as ſet forth in the appendix, he directs when he will be waited upon by the deputy to deliver the ſame into the houſe of lords.

The tranſcript of the record, how carried up.

The deputy as directed takes the writ ſo returned, and the tranſcript annexed, to the houſe of lords, and there delivers them into the hands of the lord chief baron, who being introduced to the bar of the houſe, he there ſhortly opens

The clerk of the pleas, or his deputy attends the chief baron there, with to the bar of the houſe of lords,

and the chief baron delivers the ſame at the table.

the nature of the preceedings, and then delivers the writ of error, and tranſcript to the clerk of the houſe at the table, and then the tranſcript is examined in an outer room with the original record brought thither by the bagbearer for that purpoſe.

The ſubſequent proceedings being under the directions of the houſe of lords are improper to be further dwelt upon here.

Plaintiff in error a member, writ of error in parliament,

Roberts againſt *White*, *MS. in Sccio.* This plaintiff in error was a member of the houſe of commons, and judgment was obtained againſt him for 500*l.* upon an arbitration bond; a writ of error returnable in the exchequer-chamber was nonpros'd, and afterwards a writ of error teſted the 22 *April* 5 *Geo.* 1. returnable in parliament at the next ſeſſions, to wit, on the 19th day of *May* then next.

Nothing being done in parliament and ſeſſions ended, the plaintiff in error moved below to ſtay execution.

In *Trin.* 6 *Geo.* 1. Nothing being done in parliament, and the ſeſſions being ended, the court of exchequer was moved for a writ of *ſuperſedeas* to ſtay execution.

The attorney general for the plaintiff in error inſiſted, that notwithſtanding the writ of error was returnable as above, it was not determined, but was a *ſuperſedeas*.

Which was oppoſed.

Mr. *Fazakerley* inſiſted that there ſhould have been a memorandum or notice on the roll.

Order of the lords 13th *July* 1678. taken from the ſtatute of *Hen.* 8. of appeal, and that borrowed from the civil laws.

Writ not pending till carried up.

Lord chief baron——. Writ not pending till carried up; it is clearly gone, however not a *ſuperſedeas*. They cannot carry it to the lords

lords now. It would not be received but by ſurprize.

Baron *Price*: Notwithſtanding *Stafford*'s caſe, and that in *Lev.* the writ of error cannot be received in the houſe of lords: Believes it would be contrary to the juſtice of the houſe of lords: Agreed with the chief baron.

Cannot now be received in the houſe of lords.

Baron *Montague:* If there had been a motion made for leave to take out execution, it would have been conſidered, whether it ought to have gone or not; the chief baron having allowed a writ of error, no execution could be taken out; during the ſitting of parliament it was a *ſuperſedeas*. It muſt remain, on account of the rule of the lords, above the fourteen days if they did not ſit ſo long, becauſe the writ of error is pending before it is returned: His opinion therefore was, That there ſhould appear ſomething to the court before the execution goes out, and that till then it is a *ſuperſedeas* notwithſtanding the prorogation, but that he will not ſtand by his opinion.

Quære if after chief baron allowed of a writ of error, it was not a ſuperſedeas if the lords did not ſit 14 days, as the writ is pending before it is returned.

Baron *Page*: If there had been no conſtant rule for fourteen days in the houſe, and a rule had been in this caſe, that if by ſuch a time the record was not tranſcribed, they could not receive it, and if this rule had been carried to the chief baron, execution might have been made out, as to the fourteen days if the ſeſſions did not ſit ſo long; it is not the preſent caſe. This rule is declarative of the time to tranſcribe in. The writ is rightly made out, and need not to have been carried to be ſigned by the chief baron. The writ is not pending till carried to the lords: The rule of the houſe of lords is an authority in ſome reſpects for the making out an execution. A writ of error is a *ſuperſedeas* before pending,

The 14 days rule in the houſe of lords declarative of the time to tranſcribe,

the writ not pending till carried to the lords,

is a ſuperſedeas before pending, but not before a parliament ſubſiſts,

pending, but before a parliament is in being or called is not a *ſuperſedeas*. If the writ had been lodged with the lords, the ſeſſions of the parliament being ended had not determined it; there ought no *ſuperſedeas* to go. *Caſes cited*, 2 *Lev.* —— and *Sedgwich*. 3 *Keb.* 231. 1 *Sid.* 245, 413. *Raym.* 383, 384. 5 *Mod.* 338. 1 *Salk.* 261. *Dalton* and *Dalton*, *Co. Inſt.* 4. cited by Mr. *Bootle*.

if lodged, the ſeſſion being ended, had not determined it, ſuperſedeas denied.

In *Bunb.* 64. This cauſe is reported as follows:

The writ of error to the houſe of lords muſt be tranſcribed in 14 days, or it is no ſuperſedeas if the parliament be prorogued.

In *White* againſt *Roberts*, *July* 6th 1720. A writ of error was brought in the houſe of lords upon a judgment *in Sccio*. the parliament was prorogued, and then execution was taken out upon the judgment here, and the money levied: the attorney general, and Mr. *Fazakerley* moved to ſet this execution aſide; for though the parliament was prorogued, yet the writ of error continued in force, and conſequently it is a *ſuperſedeas* to the execution; but upon hearing ſerjeant *Cheſhyre* on the other ſide, and inſpecting the orders of the houſe of lords, whereby it appeared that the writ of error ſhould have been tranſcribed within fourteen days, which was not done in this caſe; The court thought it not reaſonable to hang up the party, but that he ought not to have the benefit of his execution; baron *Montague diſſentiente*; and the caſe of *Hood* againſt *Godfrey* in *Hilary* term 1710. was cited, in which caſe there was judgment in an *aſſumpſit* in *Trinity* term before, and a *fieri facias* iſſued, and then a writ of error was brought in parliament; the parliament was diſſolved in *September* following; then a *teſtatum fieri facias* iſſued,

iſſued, and was executed; which was ſet aſide, becauſe the *teſtatum fieri facias* was grounded upon the *fieri facias*, which was certainly *ſuperſeded* by the writ of error. But *nota*; This proves that an original execution might well be taken out after the diſſolution of the parliament. *Bunb.* 64.

Error to the houſe of lords, when to be tranſcribed.

In *Froſt* againſt *Dawes Jan.* 23, 1720. A writ of error was nonproſſed in the exchequer chamber for want of aſſigning errors; and upon that a writ of error was brought *in domo procerum*, but the record was not tranſcribed according to the order within fourteen days; therefore upon motion on the behalf of the defendant in error, it was ordered, that the record ſhould be tranſcribed in eight days and certified into parliament, or the defendant in error to be at liberty to take out execution. *Bunb* 69.

In aſſault for ill uſage on board a ſhip.

This was upon an action brought in aſſault and battery againſt the captain of a ſhip, who whipt, and ſo cruelly abuſed *Froſt* for many months together, that when they were in India he was forced to fly to ſave his life, and loſe all the benefit of the voyage, and get home to *England* as he could. In *Mich.* 1719. *Dawes* ſuffered judgment to go by default, and a writ of inquiry was awarded to aſcertain the damages, upon which, to prevent objections, and that the matter might be more fairly and ſolemnly determined, the defendant in error, *Froſt*, obtained an order, that the writ of inquiry for damages in the ſaid cauſe ſhould be executed before the lord chief baron, and that the ſheriff might ſummon a good jury.

Judgment by default.

Inquiry before the chief baron on ſpecial motion.

And 1000 l. damages.

Purſuant to this order a writ of inquiry was executed 23 *Nov.* 1719. before the lord chief baron (counſel on both ſides attending), and af-

ter a very long debate which held ſeveral hours, the jury gave the plaintiff 1000 *l.* damages.

Motion to ſet it aſide for exceſſive damages, and denied.

On the 27 *Nov.* 1719. *Dawes* moved to ſet aſide the ſaid inquiry for exceſſive damages, but upon hearing counſel on both ſides, the court was of opinion, that the damages were not exceſſive, and therefore refuſed to grant a new writ of inquiry; and ſo *Froſt* had his judgment for the ſaid 1000*l.* damages, and 31*l.* 17*s.* coſts.

Whether a prorogation be a ſuperſedeas to a writ of error in parliament, or not.

In *Wright* againſt *Grove* 14 *June* 1723. A writ of error was brought upon a judgment in treſpaſs, into the houſe of lords; the houſe being prorogued, the writ of error (as was alledged) was expired; and therefore it was now moved by Sir *Conſtantine Phipps*, for leave to take out execution; the record alſo having never been tranſcribed (it was ſaid) the lords could do nothing upon it; but *per curiam (abſente Price* baron), if the prorogation is a *ſuperſedeas*, you may take out execution without applying to the court; if it is not, we cannot grant the motion; what the lords do in their judicial capacity, goes over from ſeſſion to ſeſſion, as matters below do from term to term; and the motion was denied, being oppoſed by Mr. *Kettleby* and Mr. *Raby*. *Bunb.* 131. 2 *Lev.* 93. *Raym.* 383, 4. 2 *Cro.* Biſhop of *Oſſory*, Order of the lords, 19 *June* 1678. 1 *Vent.* 266.

If by the prorogation the writ of error is not a ſuperſedeas, execution may iſſue, if it is, the court cannot grant it.

With great deference to the above reporter, the opinion of the court ſeems to be miſtaken, and the reverſe to be really their opinion, *viz.* That if by the prorogation the writ of error is not a *ſuperſedeas*, you may take out execution without applying to the court: if it is, the court cannot grant the motion.

A writ of error is held ſo abſolutely a *ſuperſedeas*, that the plaintiff cannot ſo much as take out a *capias ad ſatisfaciendum* and return it *non eſt invent.* in order to proceed againſt the bail. *Fitz-Gib.* 175.

Writ of error ſo abſolutely a ſuperſedeas, that ca. ſa. cannot be returned non eſt invent. to fix bail.

Chapman leſſee of Sir *John Wolſtenholme* againſt lord *Carteret*, *in Sccio. MS.* This defendant obtained a ſpecial verdict and judgment in 1706, and the judgment was affirmed in the exchequer chamber in 1708, and in the houſe of lords in *Feb.* following.

Judgment affirmed in error in the exchequer chamber and in parliament.

Johnſon, eſq; againſt *Perrie*, *in Sccio. MS.* This defendant in error obtained a verdict at the ſittings in *Weſtminſter*, in *Mich.* 1712. for an aſſault and battery, and recovered 600 *l.* damages, and judgment after an attempt for a new trial was ſigned.

Aſſault and battery, and verdict for 600l damages. New trial refuſed.

The plaintiff's writ of error returnable in the exchequer chamber was nonproſſed the 10th of *Feb.* following, and thereupon he ſued out a writ of error returnable in parliament, upon a miſtake, which was diſcovered in the writ of *diſtringas jurator'* in theſe words, *Niſi juſtic' n'ri ad aſſ'as in com' tuo capiend' aſſign'* inſtead of *niſi Ed'rus Ward mil' capital' baro ſcij' n'ri*, and made the day in bank *Wedneſday* 26 *Nov.* but different from the roll and record of *Niſi prius*, both which were right.

Special errors aſſigned in parliament.

The plaintiff in error aſſigned the common error, and theſe variations between the record and the writ of *diſtringas*, and alſo that the writ of *venire facias jurator'* was returnable on a general return day, which by the courſe of the court of exchequer ought to have been on a day

day certain, and prayed a writ of *certiorari* to certify the writs of *venire* and *diſtringas*.

On motion in the court of exchequer it appearing that the cauſes aſſigned for error were only miſpriſions of the clerk, they were ordered to be amended.

On the iſſuing of the writ of *certiorari*, the court of exchequer was moved 12 *June* 1713. and on reading the record of *Niſi prius*, and of judgment thereupon, a rule was made to ſhew cauſe why the writs of *venire* and *diſtringas* ſhould not be amended, which rule, after ſeveral enlargements and great debates, and finding the miſtakes a meer miſpriſion of the clerk, was made abſolute, and the writs amended in court on the 20th of *June*.

Plaintiff ordered by conſent his coſts in error in parliament on ſubmitting to be nonproſſed, but refuſed it afterwards in hopes to get over the ſeſſions.

On the 25th of the ſame month the plaintiff in error moved for his coſts of the writ of error, offering to enter a *nonpros* upon his writ of error depending in parliament, ſo as he might have his coſts, which being agreed unto, the plaintiff by his own conſent was to *nonpros* his writ of error by *Tueſday* the 30th of *June*, and that thereupon the court ordered that he ſhould have his coſts, to be taxed by the proper officer, but afterwards he refuſed to do what he had conſented to, in hopes to get over the ſeſſions of parliament.

Whereupon the lords ordered a hearing by counſel, and Judgment was affirmed thereon.

The lords therefore upon the petition of the defendant in error, ordered that one counſel on each ſide ſhould be heard on *Wedneſday* the 8th of *July* in the ſame year, on the matter of that petition, and that the *certiorari* ſhould be returned in the mean time; and the judgment was affirmed by the lords.

On error in parliament not carried in.

Simons againſt *Jenner* in error in parliament, *in Sccio. MS.* The defendant in error in *Mich.* 1 *Geo.* 2. obtained a judgment by inquiſition in caſe on promiſe, and a writ of error returnable in the exchequer chamber was *nonproſſed* thereupon in *Eaſter* term following. The plaintiff

Rule in the exchequer made on motion for 8 days

in

in error afterwards brought a writ of error returnable in parliament, but did not tranſcribe, nor do any act towards proſecuting his wtit of error during the meeting of the parliament, whereupon the defendant in error moved the court of exchequer, that unleſs the plaintiff in error tranſcribed the record, and carried the ſame up to the houſe of lords within eight days, the defendant *Jenner* might be at liberty to take out execution on his ſaid judgment and affirmance, which was ordered accordingly.

to tranſcribe the Records into the houſe of lords or execution to go.

Thomas Heath againſt Sir *John Barnard*, Knt. and Sir *Robert Godſcall*, Knt. in error, *in Sccio. MS.* This judgment was in debt for 2000 *l.* on a ſecurity bond to the defendants, as ſheriffs of *Middleſex*, and obtained in *Hil.* 1737. *Heath*'s writ of error returnable in the exchequer chamber was *nonproſſed* 13 *June* 1738. whereupon *Heath* brought a writ of error returnable in parliament the firſt day of the then next ſittings, and in *Eaſter* 1739. during the ſitting of that parliament, the defendants in error moved, that *Heath* the plaintiff in error might tranſcribe the record, and aſſign his errors within eight days then next, or that the defendants might be at liberty to take out execution on the ſaid judgment and the affirmance thereof in the exchequer chamber, which was ordered accordingly.

The like rule.

The plaintiff in error on this rule aſſigned the general errors, and the defendants pleaded *in nullo eſt erratum*, whereupon the ſaid Judgment was affirmed in the houſe of lords; and in the appendix will be ſet forth the form of ſuch judgment affirmed and of ſpecial errors aſſigned in the caſe of *Barlace* and others and *Dee*, in 1735.

Judgment affirmed in the houſe of lords.

Special errors aſſigned.

Of

Of the rules concerning priſoners and of ſuperſeding them.

If defendant be taken in cuſtody by writ and impriſoned, plaintiff may before the end of the term next after the return day of the writ deliver a declaration to ſuch priſoner or his gaoler, and if defendant ſhall not appear and plead, plaintiff may ſign judgment, as if defendant had appeared and not pleaded.

By *ſtat.* 4 & 5 *Will.* & *Mar. cap.* 21. *ſect.* 2. If any defendant be taken or charged in cuſtody at the ſuit of any perſon, upon any writ out of the courts at *Weſtminſter*, and impriſoned for want of ſureties, the plaintiff may, before the end of the next term after ſuch proceſs ſhall be returnable, declare againſt ſuch priſoner in the court out of which the writ ſhall iſſue, and ſhall cauſe a copy thereof to be delivered to ſuch priſoner or to the gaoler in whoſe cuſtody ſuch priſoner ſhall be; and if ſuch priſoner ſhall not appear, and plead to the ſame, the plaintiff ſhall have judgment as if the priſoner had appeared and refuſed to plead.

Priſoner on contempt or meſne proceſs and committed to the Fleet ſhall be detained till diſcharged by a courſe of law, and if the warden ſuffer him to go at large except by habeas corpus or rule of court, the ſame ſhall be judged an eſcape.

By *ſtat.* 8 & 9 *Will.* 3. *cap.* 27. *ſect.* 1. All priſoners, either upon contempt or meſne proceſs, or in execution, who ſhall be committed to the cuſtody of the marſhal of the king's bench priſon or warden of the Fleet, ſhall be detained within the ſaid priſons, or the rules of the ſame, until they be diſcharged by courſe of law; and if the ſaid marſhal or warden, or any other keeper of any priſon, ſhall ſuffer any priſoner to go at large out of the rules (except by *habeas corpus*, or rule of court, which rule ſhall not be granted, but by motion made, or petition read in court) every ſuch being out of the rules ſhall be judged an eſcape.

The following rules of practice extend to moſt caſes neceſſary in regard to priſoners, and therefore

therefore little more will be ſaid about them, as in other reſpects the courſe of proceedings are the ſame in all the courts.

By the old rules, it is ordered, "That no "copy of a declaration be delivered to a "priſoner in cuſtody before the day of the re- "turn of the proceſs on which the defendant "was taken or charged in cuſtody." No declaration to be delivered to a priſoner before the return day of the proceſs.

"That no rule be given for the defendant "in cuſtody to appear and plead to any decla- "ration againſt him, till an affidavit be filed "of the delivery of a copy of ſuch declara- "tion, and the time when and the perſon to "whom the ſaid copy was delivered, and that "the defendant was arreſted or charged in cuſ- "tody by proceſs of this court, returnable be- "fore the delivery of ſuch copy." No rule to appear and plead be given till affidavit of ſervice be filed.

"If a copy of the declaration be delivered "againſt ſuch defendants before *menſem Paſchæ* "or *craſtinum animarum*, and affidavit made "thereof and filed, and the defendant doth "not appear before the end of ten days after "*Eaſter* and *Michaelmas* terms reſpectively, "judgment may be entred againſt him, if rules "have been given. But if he doth appear be- "fore the end of ten days after the term, he "ſhall imparl until the next term (unleſs the "action be in *London* or *Middleſex*, and the de- "fendant be in priſon within forty miles of "*London* or *Weſtminſter*) then though he doth "appear before the expiration of ten days after "the end of the term, he ſhall plead two days "before the eſſoign day of the next term, and "in default thereof (rules having been given) "judgment If declaration be delivered before menſem Paſ. or craſtin' animarum, and affidavit made thereof, and defendant doth not appear in 10 days after thoſe terms judgment may be ſigned; but if defendant appear in time he ſhall imparl till next term, unleſs the action be in London or Middleſex, and defendant in priſon with-

in 40 miles, and ſhall plead 2 days before eſſoign, or judgment againſt him.

" judgment may be entred againſt him as aforeſaid."

If on or after ſaid returns, or in Hil. or Trin. terms, and defendant appears in two days before the eſſoign day of next term, he ſhall imparl, or otherwiſe judgment.

" If a copy of the declaration be delivered againſt ſuch defendant on or after *Menſem Paſchæ* in *Eaſter* term, or *craſtinum animarum* in *Michaelmas* term, or in *Hilary* or *Trinity* term, and thereupon the plaintiff gives rules to appear and plead; then if the defendant appears two days before the eſſoign day of the next term, he ſhall imparl until the ſaid next term, but if he does not appear within that time judgment ſhall be given againſt him."

If copy of declaration be delivered before eſſoign day of the term following the return of the writ, plaintiff may give rules to appear and plead in ſuch next term, and ſign judgment if no appearance and plea.

" If a writ be returnable in any term, and a copy of the declaration has been delivered before the eſſoign of the next term, the plaintiff in ſuch next term may give rules to appear and plead, and if the defendant does not appear, and plead upon the expiration of the rules, judgment ſhall be given againſt him.

If gaoler ſhall ſuppreſs declaration, attachment will be ordered againſt him.

" If any gaoler or keeper of a priſon, having received a copy of a declaration againſt any priſoner in his cuſtody, ſhall ſuppreſs the ſame, and not deliver it forthwith unto ſuch priſoner, an attachment ſhall be iſſued againſt him."

The above rules ſtill continue in practice in every particular conſiſtent with what follows.

In

In *Trinity* 1753. " it was ordered, that " no copy of a declaration delivered at the " *Fleet* priſon againſt any priſoner there, ſhall " be a ſufficient charge to hold ſuch priſoner to " bail, or to detain ſuch priſoner in cuſtody for " want of bail, unleſs an affidavit that the " plaintiff's cauſe of action amounted to 10 *l.* " or upwards, be firſt made and filed in the " office of pleas, and an indorſement made " by the plaintiff's attorney or clerk in court " upon ſuch copy of a declaration, ſignifying " the ſum of money ſpecified in ſuch affidavit, " for which ſum ſo indorſed bail ſhall be re- " quired, and for no more."

A declaration no charge in cuſtody without affidavit of debt of 10 l. or upwards.

" That in all caſes, where a priſoner is or " ſhall be taken, detained or charged in cuſ- " tody by meſne proceſs iſſuing out of this " court, and the plaintiff ſhall not cauſe a de- " claration againſt ſuch priſoner to be deli- " vered to ſuch priſoner, or to the gaoler or " turnkey of the gaol or priſon where ſuch " priſoner is or ſhall be detained or charged " in cuſtody before the end of the next term " after the return of the proceſs, by virtue " whereof ſuch priſoner is or ſhall be taken, " detained and charged in cuſtody, and cauſe " an affidavit to be made and filed in the of- " fice of pleas of this court, of the delivery " of ſuch declaration, of the time when and " perſon to whom the ſame was delivered, by " the firſt day of next term after the delivery " of ſuch declaration, the priſoner ſhall be diſ- " charged out of cuſtody by virtue of a *ſu-* " *perſedeas* to be granted by this court, or one " of the barons thereof, upon entring an ap- " pearance, unleſs upon notice given to the " plaintiff's attorney or clerk in court good " cauſe

If no declaration before the end of the next term after return of the proceſs, and affidavit filed thereof by the firſt day of the following term, priſoner ſhall be diſcharged by ſuperſedeas on entring appearance, &c.

If committed or ſurrendred to the Fleet in diſcharge of bail, and no declaration before the end of the term next after, he ſhall be diſcharged on appearing, &c.

" cauſe ſhall be ſhewn to the contrary; and in " caſe of a commitment or ſurrender to the *Fleet* priſon in diſcharge of bail before a de- " claration delivered, unleſs the plaintiff ſhall " cauſe a copy of a declaration to be delivered " as aforeſaid before the end of the term next " after ſuch commitment or ſurrender ſhall be " made, and due notice of ſuch ſurrender gi- " ven, the priſoner ſhall be diſcharged out of " cuſtody by virtue of a ſuperſedeas to be " granted as aforeſaid upon entring an appear- " ance, unleſs upon notice given to the plain- " tiff's attorney or clerk in court good cauſe " ſhall be ſhewn to the contrary."

And if plaintiff ſhall not proceed to judgment within three terms, the term wherein ſuch declaration was delivered ſhall be one; after declaration delivered priſoner ſhall be diſcharged; or if committed or ſurrendred, in three terms after inclufive.

" And it is further ordered, That in all caſes " after a declaration delivered as aforeſaid at " the *Fleet*, or any other gaol or priſon, un- " leſs the plaintiff ſhall proceed to judgment " thereupon within three terms next after ſuch " declaration delivered (if by the courſe of this " court the plaintiff could ſo proceed) of which " three terms the term wherein ſuch declara- " tion ſhall be delivered ſhall be taken to be " one, (or in caſe of ſurrender in diſcharge of " bail after a declaration delivered, unleſs the " plaintiff ſhall proceed to final judgment " thereupon within three terms next after ſuch " declaration delivered, (if by the courſe of " this court the plaintiff could ſo proceed) of " which three terms the term wherein ſuch de- " claration ſhall be delivered ſhall be taken to " be one), or in caſe of a ſurrender in diſcharge " of bail after a declaration delivered, unleſs " the plaintiff ſhall proceed to final judgment " thereupon within three terms next after ſuch " ſurrender, and due notice thereof (if by the " courſe of this court the plaintiff could ſo proceed,

" proceed, of which three terms the term " wherein ſuch ſurrender ſhall be made ſhall " be taken to be one) the priſoner ſhall be diſ- " charged out of cuſtody by writ of ſuperſe- " deas to be granted as aforeſaid upon entring " an appearance, unleſs upon notice given to " the plaintiff's attorney or clerk in court good " cauſe ſhall be ſhewn to the contrary; and in " all caſes after final judgment obtained againſt " any priſoner in the *Fleet*, or any other gaol " or priſon, unleſs the plaintiff ſhall cauſe ſuch " priſoner to be charged in execution upon the " ſaid judgment within two terms next after " ſuch final judgment ſhall be obtained (if by " the courſe of the court the plaintiff could " ſo proceed, of which two terms the term " wherein ſuch judgment ſhall be obtained " ſhall be taken to be one) in caſe no writ of " error ſhall be depending on ſuch judgment; " but if any writ of error ſhall be depending " thereupon, then within two terms next after " the judgment ſhall be affirmed, or the writ " of error ſhall be nonproſed or diſcontinued, " including the term in which ſuch affirmance " of the judgment, or nonpros, or diſcontinu- " ance of the writ of error ſhall be obtained; or " in caſe of a ſurrender in diſcharge of bail " after final judgment obtained, unleſs the " plaintiff ſhall proceed to cauſe the defendant " to be charged in execution upon the ſaid " judgment within two terms next after ſuch " ſurrender and due notice thereof (of which " two terms the term wherein ſuch ſurrender " ſhall be made ſhall be taken to be one) in " caſe no writ of error ſhall be depending on " ſuch judgment; but if any writ of error " ſhall be depending thereupon, then within

And if after final judgment plaintiff ſhall not charge defendant in execution within 2 terms inclu- ſive after judg- ment obtained, or within 2 terms incluſive after the er- rors are non- proſed or diſ- continued thereon; or in caſe of a ſurrender in diſcharge of bail after judgment within 2 terms incluſive next after; or in caſe errors be depending thereon in 2 terms inclu- ſive, the priſoner ſhall be diſcharged.

" two terms next after the judgment ſhall be " affirmed, or the writ of error ſhall be non- " proſſed or diſcontinued, including the term " in which ſuch affirmance of the judgment, " or nonpros, or diſcontinuance of the writ of " error ſhall be obtained, the priſoner ſhall be " diſcharged out of cuſtody by ſuperſedeas to " be granted as aforeſaid, unleſs upon notice " given to the plaintiff's attorney or clerk in " court, good cauſe ſhall be ſhewn in either of " the ſaid caſes to the contrary.

Where defendant is charged by proceſs of this court, and removed by habeas corpus, the ſubſequent proceedings ſhall be computed from his detainer by the proceſs.

" And it is further ordered, That in all caſes " where a priſoner ſhall be taken or charged " in cuſtody of any ſheriff or other officer by " meſne proceſs of this court, and ſhall after- " wards be removed by writ of *habeas corpus* " and committed thereupon by this court, or " any of the barons thereof, to the *Fleet* priſon, " the time for the plaintiff's proceeding againſt " ſuch priſoner ſhall commence and be com- " puted from the priſoner's being firſt taken " and detained or charged in cuſtody by virtue " of ſuch proceſs."

No treaty or agreement ſhall prevent the benefit of a ſuperſedeas, unleſs in writing ſigned by defendant, or ſome one authoriſed by him, and therein expreſſed to be at defendant's requeſt.

And it is ordered, " That no treaty or " agreement ſhall be ſufficient cauſe to pre- " vent any defendant's having the benefit of " a ſuperſedeas for want of proſecution, un- " leſs the ſame be in writing ſigned by the de- " fendant or his attorney or clerk in court, or " ſome perſon duly authorized by the de- " fendant, and it be therein expreſſed that " proceedings are ſtaid at the defendant's re- " queſt."

If

If the defendant is in cuſtody of the ſheriff, the clerk in court having ingroſſed his bill according to the form ſet forth in the appendix, and filed it, he ſends a copy thereof on duty to the ſolicitor in the country, who having made another copy thereof, ſerves one of them on the priſoner or his gaoler, and gives one ſhilling to the gaoler if he is ſerved therewith; the other copy is annexed to an affidavit of the ſervice, and ſent up to the clerk in court, who having filed it, proceeds conformable to the above rules.

The defendant or his gaoler muſt be ſerved with the declaration, and how.

The affidavit muſt ſet forth the time when, and the perſon to whom the copy was delivered, and that the defendant was arreſted or charged in cuſtody by proceſs out of the court of exchequer, returnable before the delivery of ſuch copy; and if the copy of the declaration is delivered to the gaoler, it will be neceſſary to ſet forth in the affidavit that the gaoler acknowledged to the deponent that the defendant was a priſoner in his cuſtody in the cauſe in queſtion.

What the affidavit of the ſervice muſt ſet forth.

If the defendant is in cuſtody of the warden of the *Fleet*, the ſame ſervice will be required, but the affidavit of the ſervice will be unneceſſary, the defendant being in the priſon of the court.

If the defendant is in the Fleet, the affidavit will be unneceſſary.

If the defendant be removed into the king's bench priſon by proceſs or rule of that court, ſuch priſoner muſt be removed or remanded back to the *Fleet* by *habeas corpus ad reſpondendum*, before any further proceedings can be had againſt him in this court.

If the defendant be in the king's bench priſon, he muſt be removed by habeas corpus to be proceeded againſt here.

Defendant being impriſoned by writ muſt be diſcharged by writ.

Where the defendant is impriſoned by the king's writ, he muſt in like manner be ſet at liberty by the king's writ, and the latter writ is called a ſuperſedeas, which is as good a cauſe to diſcharge the defendant as the firſt proceſs was to arreſt him. *Finch* 453.

For default of plaintiff's proceeding defendant may be ſuperſeded.

If the plaintiff does not proceed according to the rules above preſcribed, the defendant by ſuch default in the plaintiff in any one of the above caſes becomes ſuperſedable, and being once ſo he may avail himſelf of it at any time afterwards, in the following manner.

The manner of ſuperſeding a priſoner.

The gaoler's certificate of cauſes againſt the defendant muſt be annexed to an affidavit of his ſigning the ſame, and that there have been no proceedings ſince within the time limited by the rules of the court; and the ſolicitor for the defendant, or his clerk in court, having this ready, muſt take out a ſummons from one of the barons of the court for the plaintiff, to ſhew cauſe why he did not proceed, *&c.* as the caſe happens to be; and on hearing the ſolicitors or clerks in court on both ſides, ſuch baron will order a ſuperſedeas, or not, as the facts appear to him; or in caſe after three ſummons, without any attendance on the part of the plaintiff, the baron will, on reading the ſaid affidavit and certificate annexed, and an affidavit of ſervice of ſuch three ſummons's, and due attendances on the part of the defendant, order a ſuperſedeas *ex parte*.

If the priſoner is in the king's bench priſon, or in the *Fleet*, the certificate from the clerk of the papers of either priſon will be ſufficient without an affidavit of their reſpective ſigning.

Of writs of habeas corpus.

The ſeveral uſes of the writs of *habeas corpus* are to bring the bodies of perſons into court who are committed to any gaol or places of confinement, and will remove the perſon and cauſe from one court and priſon to another. This writ was originally ordained by the common law of the land as a remedy for ſuch as were unjuſtly impriſoned, to procure their liberty. The uſe of the writ of habeas corpus.

The different kinds of *habeas corpus* in uſe in the office of pleas, are as follow:

The *habeas corpus cum cauſa* to remove the body and cauſe. Habeas corpus cum cauſa.

The *habeas corpus ad faciend. & recipiend.* to remove the cauſe into the court of exchequer from an inferiour court. Habeas corpus ad faciend. & recipiend.

The *habeas corpus ad reſpondend.* where the perſon is impriſoned upon proceſs in the king's bench, and a third perſon is minded to ſue the priſoner in the office of pleas; this writ will remove the priſoner from the king's bench priſon of the marſhalſea in *Southwark* to the priſon of the *Fleet*, to anſwer the action in this court. Ad reſpondend.

The *habeas corpus ad ſatisfaciend.* to charge the priſoner in execution. Ad ſatisfaciend.

The *habeas corpus ad teſtificand.* to carry the priſoner to the aſſizes or ſittings at *Weſtminſter* or *Guildhall*, or on an inquiſition, *&c.* as a witneſs. Ad teſtificand.

By the ſtatute of 2 *Hen.* 5. *ſt.* 1. *cap.* 2. It is enacted, "That if upon a *certiorari* or *habeas corpus cum cauſa*, it be returned that the priſoner is condemned by judgment given againſt him, he ſhall preſently be remanded, where If on certiorari or habeas corpus a judgment be returned, the priſoner ſhall be remanded.

" where he ſhall remain in priſon without be-
" ing let to go by bail againſt the will of the
" plaintiffs, until agreement (or ſatisfaction) be
" made to them of the ſums ſo adjudged."

Habeas corpus to any inferior court ſhall be allowed, if delivered before a jury ſworn; not allowed where the inferior court hath juriſdiction, unleſs before iſſue or demurrer joined.

By the ſtatute of 43 *Eliz. cap.* 5. *ſect.* 2. " No writ of *habeas corpus cum cauſa* ſued out " of any of the courts at *Weſtminſter* to an in-
" ferior court ſhall be allowed, unleſs delivered
" to the judge or officer of ſuch inferior court
" before any of the jury are ſworn; and by
" ſtat. 21 *Jac.* 1. *cap.* 23. *ſect.* 2. ſuch writ
" ſhall not be allowed to ſtay or remove any
" cauſe depending in any court of record
" which ſhall have juriſdiction to hold plea of
" the cauſe, unleſs delivered before iſſue or
" demurrer joined, ſo as it be joined within
" ſix weeks after the arreſt or appearance."

Habeas corpus muſt be ſigned by a judge.

By ſtatute of 1 & 2 *Phil. & Mar. cap.* 13. " A *habeas corpus* for removing of a priſoner
" muſt be ſigned by the chief or one of the
" judges of the court out of which the writ
" iſſues, under the penalty of 5*l.*"

If any cauſe not concerning freehold doth appear by the declaration not to amount to 5l. it ſhall not be removed from ſuch court.

By the ſtatute of 21 *Jac.* 1. *cap.* 23. *ſect.* 4. It is enacted, " That if in any cauſe not con-
" cerning freehold or inheritance, or title of
" land, leaſe or rent which ſhall be brought,
" commenced or depending in any court of re-
" cord within any city, liberty, town corpo-
" rate, or elſewhere, which ſhall have juriſ-
" diction to hold plea in that cauſe, if it
" ſhall appear or be laid in the declaration,
" that the debt, damages, or things demand-
" ed, doth or ſhall not amount to or exceed
" the ſum of 5*l.* (notwithſtanding that there
" may be other actions exceeding 5*l.* by 12
" *Geo.* 1. *cap.* 29.) that then ſuch cauſe ſhall
" not be ſtaid nor removed into any of his
" majeſty's

" majeſty's courts at *Weſtminſter*, *&c.* by any " writ or writs whatſoever, to be ſued or pro- " ſecuted forth or out of his majeſty's courts " at *Weſtminſter*, *&c.* other than writs of error " or attaint."

Sect. 5. " And if any writs ſhall be ſued forth " contrary to the intent and meaning of this " act, that then it ſhall and may be lawful to " and for the judge or officer, to whom ſuch " writs ſhall be directed or delivered, to diſal- " low or refuſe the ſame, and to proceed as " if no ſuch writs had been granted or ſued " out." And if not removable the officer may refuſe the writ.

Sect. 6. " Provided always, that this act " ſhall extend only to ſuch courts of record in " liberties, *&c.* for ſo long time only as there " is or ſhall be an utter barriſter of three years " ſtanding at the bar of one of the four inns " of court, that is or ſhall be ſteward, under " ſteward or deputy ſteward, town clerk or " judge, or recorder of the ſame inferior court, " or that is or ſhall be from time to time aſ- " ſiſtant to ſuch judge as ſhall not be an utter " barriſter of ſuch ſtanding as is aforeſaid and " there preſent, and not of counſel in any ac- " tion, ſuit or cauſe then depending in the " ſame inferior court." Provided ſuch officer be an utter barriſter of 3 years ſtanding.

Sect. 7. " Provided, that this act, or any " thing therein contained ſhall not extend to " any cauſe, wherein any ſuch foreign or other " plea ſhall be pleaded, as could not be tried " or determined within the juriſdiction of ſuch " inferior court." Provided it be within the juriſdiction of the court.

By the ſtatute of 31 *Car.* 2. *cap.* 2. " A " perſon in priſon may have an *habeas corpus* " from any judge on complaint made, and " view of the copy of the warrant of commit-

" ment, (unleſs he be committed for treaſon or " felony eſpecially expreſſed in the warrant, " or other offences or matters not bailable) " which *Habeas corpus* ſhall be returned imme- " diately, and upon certificate of the cauſe of " commitment the priſoner ſhall be diſcharged " on bail."

The general practice ſubject to the above ſtatutes has been under the following old rules, *viz.*

Writs of habeas corpus cum cauſa may be granted returnable immediate directed to the ſheriffs of London or Middleſex, in term or vacation, but directed otherwiſe not, unleſs in diſcharge of bail.

" That writs of *Habeas corpus cum cauſa* " directed to the ſheriffs of *London* or *Middle-* " *ſex* may be granted returnable immediately " in term or vacation in court, or before a ba- " ron at his chambers, but that writs of *Habeas* " *corpus cum cauſa* otherwiſe directed, ſhall be " returnable at a day certain in court in the " term, unleſs to deliver over to priſon in diſ- " charge of bail."

Habeas corpus ad reſpondend. or ſatisfaciend. may be granted to the warden of the Fleet, &c. returnable at a day certain.

2. " That a *Habeas corpus ad reſpondend.* or " *ſatisfaciend.* may be granted to the warden of " the *Fleet*, marſhal of the *King's Bench*, or " the keeper of any inferiour priſon or liberty, " or franchiſe, returnable at a day certain in " court, and ſhall be agreed a good cauſe of " detainer as well as where *capias ad ſatisfaciend.* " cometh to a ſheriff."

If Habeas corpus cum cauſa be returned charged with proceſs out of K. B. or C. B. though returnable at a day to come, may be committed.

3. " That if upon a *Habeas corpus cum cauſa*, " the priſoner be returned charged with proceſs " out of the king's bench or common pleas, " though returnable at a day to come, the " priſoner may be committed with thoſe " cauſes."

4. " That

4. " That if upon a *Habeas corpus or cepi* " *corpus* the party be returned in cuſtody, and " bailable, and ſpecial bail requirable, the bail " not to be taken abſolutely without conſent of " the plaintiff or his attorney, and if taken *de* " *bene eſſe* the priſoner not to be diſcharged till " the bail be aſſented to, or the plaintiff over- " ruled in court, or by one of the barons of " the *Quoif*, to accept the ſame upon examina- " tion."

If the party be returned in cuſtody, and bail requirable, not to be taken without plaintiff's conſent, and if taken de bene eſſe, not to be diſcharged till bail aſſented to, or order of a baron.

5. " That writs of *Habeas corpus* directed to " the inferiour courts of *London* and *Weſtminſter*, " *Southwark*, and other courts within two miles " of the cities of *London* and *Weſtminſter*, may " be returnable *immediatè*, and if the defendant " intendeth to be bailed, then within the 4th " day after the allowance of the writ, notice is " to be given in writing of the names and ad- " ditions of the bail, the time when, and the " baron before whom the ſame is intended to " be put in, to the plaintiff or his attorney, or him " that cauſed the plaint to be entred, or if none " can be found, then the notice in writing to " be left with the chief clerk of the inferior " court, or his deputy *that tendered the bail and* " *his attorney*, and oath made thereof, other- " wiſe the bail not to be taken, and a *proce-* " *dendo* granted, if deſired, before bail accept- " ed."

If directed to inferiour courts within two miles of London and Weſtminſter may be returnable immediatè, and if defendant intendeth to be bailed, then within the 4th day of allowing the writ notice of putting in the bail muſt be given, and oath thereof, otherwiſe not to be taken, and a procedendo granted.

6. " That if no bail in ſuch caſes be put in " within eight days after the *Habeas corpus* is " allowed in thoſe courts; when it is re- " turnable *immediatè*, a *procedendo* may be " granted

If no bail be put in in 8 days after habeas corpus allow-

ed a procedendo to be granted.

granted by any baron of the court, if deſired before bail taken."

If bail taken in plaintiff's abſence to be de bene eſſe, and if no exception in 20 days after notice, and oath thereof, the bail to be filed.

7. "That if bail be taken in the abſence of the plaintiff or his attorney, the ſame is to be taken *de bene eſſe*, and if no exception be taken within twenty days after due notice given to the plaintiff or his attorney of the names of the bail, and before whom taken, then upon oath made of ſuch notice the bail to be delivered out to be filed."

If not excepted againſt, and the bail not filed in 4 days after the 20, a procedendo may be granted on certificate.

8. "That if bail upon a *Habeas corpus* be taken before a baron at his chambers, and not excepted againſt, if it be not filed within four days after the twenty days expired, a *procedendo* may be granted upon certificate that it is not filed."

In term time plaintiff may ſpeed defendant to put in and file bail by rules, and if not put in or filed, a procedendo may be granted.

9. "That in term time the plaintiff in the inferior court may ſpeed the defendant to put in or to file bail by rules given, and if not filed according to the rule, upon a certificate thereof a *procedendo* to be granted."

All removals by habeas corpus, privilege or certiorari, ſpecial bail ought to be given.

10. "That in all cauſes of removal, be it by *Habeas corpus*, privilege or *certiorari*, ſpecial bail ought to be given."

In what caſes no ſpecial bail without ſpecial motion.

"That in actions of battery, conſpiracy, falſe impriſonment, action upon the caſe for ſlander, no ſpecial bail of courſe without ſpecial motion and order of court, or order of one of the barons."

This

This writ lay at common law for any unjuſtly detained in priſon. *Fitz. natur' Br'ium* 250. 2 *Inſt.* 53. 4 *Inſt.* 18.

Habeas corpus lies for any perſon unjuſtly detained.

A priſoner for debt (not in execution) may be brought by *Habeas corpus* as a witneſs at a trial, but the party ſuing out the writ muſt take care he eſcape not. 2 *Lil.* 3. *Style* 119. *Trin.* 1640.

A priſoner may be brought to a trial as a witneſs by this writ.

If the ſteward of any inferiour court proceed after an *Habeas corpus* delivered and allowed, the proceedings are void. *Cro. Car.* 79, 296. The *Habeas corpus* ſuſpends the power of the court below, where if they proceed it will be *coram non judice.*

If proceedings in the inferiour court after habeas corpus allowed, they will be void.

If on an *Habeas corpus* the record be filed, no *procedendo* can go to the court below, but where a record below is not filed or not returned, it may be granted. 1 *Salk.* 352.

If on habeas corpus the record be filed, no procedendo can go.

This writ removes the body of the party for whom granted, and all the cauſes depending againſt him, and if upon the return thereof the officer doth not return all the cauſes, *&c.* it is an eſcape in him. 2 *Lil. Abr.* 2.

This writ removes the body and all parties.

It is a prerogative writ which concerns the liberty of the ſubject, and muſt be obeyed in counties palatine, *&c.* If it is not, an *Alias Habeas corpus* will iſſue with a great penalty. 2 *Cro.* 543.

A prerogative writ, and muſt be obeyed.

A *Habeas corpus* is grantable without motion to remove a perſon upon an arreſt, but not where committed for a crime. 1 *Lev.* 1.

Grantable without motion, unleſs for a crime.

Before ſuing out the writ a copy of the proceſs or cauſe of detainer muſt be procured for inſtructions to the clerk in court to make out the writ.

In

In ſuing the writ out to remove a cauſe, It is directed to the inferiour court in whoſe cuſtody the defendant is, to bring him before a baron with the cauſe for which he is detained.

An inferiour court muſt return the writ in a few days, and to remove the cauſe bail muſt be put in.

It muſt be carried to ſuch inferiour court to be allowed, and a few days after the delivery the return muſt be called for, and ſpecial bail put in at the baron's chambers, which being done the cauſe is removed.

Defendant not to be delivered till bail is compleat.

If the defendant be actually a priſoner, he ſhall not be delivered from priſon till the bail on the *Habeas corpus* be accepted or juſtified in court.

If to remove a priſoner, if he eſcapes it will be at the gaoler's peril though the writ be returnable the next term:

Hil. 19 & 20 *Car.* 2. *in Sccio. Nota*; *per Hale* chief baron, and the whole court, upon a *Habeas corpus* to remove a priſoner in the *Admiralty*; though the *Habeas corpus* be returnable the next term, the ſheriff or gaoler muſt not in the mean time ſuffer him to go at large; and if he does, he is liable to an eſcape. For the writ impowers the gaoler only to bring him directly to the court, and if he gives him any liberty in the mean time, it is at his peril. *Hard.* 476.

Defendant by habeas corpus may be removed to the Fleet, and enjoy the rules and how it is to be done.

If a defendant being arreſted by meſne proceſs, or on an execution, to avoid going to gaol, or being confined there, is deſirous of being removed from thence, he may by *Habeas corpus ad ſatisfaciend. & recipiend.* be removed to the *Fleet*, and enjoy the rules there on giving a proper ſecurity to the warden of the *Fleet*, and in order to do this, in caſe the arreſt or commitment was not by proceſs iſſuing out of this court, the defendant muſt prevail with ſome creditor of his to ſue out of this office a *quo minus* requiring bail, and deliver it to the

ſheriff

ſheriff with whom the defendant ſtands charged; whereupon, and not before, the *Habeas corpus* is carried to the ſaid ſheriff, who returns it with the priſoner in cuſtody of the bailiff to the court or a baron's chamber, and thereupon the defendant is by the court, or the baron's order, in cuſtody of a tip-ſtaff turned over according as the writ directs to the *Fleet*, charged with the cauſes mentioned in the ſheriff's return.

The coſts of a *Habeas corpus* are duty 5*s.* 1*d.* ſigning and ſealing 2*s.* 9*d.* baron 4*s.* ingroſſing 2*s.* 6*d.* clerk's fee 3*s.* 4*d.*

The coſts of a *procedendo* paid for the rule 2*s.* 2*d.* for the *fiat* 2*s.* for the writ of *procedendo* 7*s.* 2*d.* for clerk's fee 3*s.* 4*d.*

Of the writ of certiorari.

The writ of *certiorari* is a writ that lies to remove a record into a ſuperiour court from an inferiour court of record, where the party ſuppoſes he may not have equal juſtice done him. Certiorari to remove a record.

It is an original writ, iſſuing out of this office, directed to the juſtices of the great ſeſſions in *Wales*, or of the counties palatine, or to the judges or officers of inferiour courts in *England*. To whom directed.

Regularly a *certiorari* ought to be directed to the judge of the inferiour court, but in ſome caſes it may be directed to the officer known to have the cuſtody of the record, and in ſome other caſes to others, as ſhall be moſt agreeable to the courſe of approved precedents, which ſeems to be the beſt guide in this matter. 2 *Hawk.*

Hawk. P. C. 289. You will find two or three precedents in the appendix.

After certiorari allowed all ſubſequent proceedings erroneous.

It is clearly ſettled that after a *certiorari* is allowed by the court below, all ſubſequent proceedings on the record are erroneous. *Cro. Car.* 261. 1 *Salk.* 148. *Cro. Eliz.* 915. *Dyer* 98. *Mo.* 677.

The return of the writ ought to be under ſeal, and returned by the perſons to whom it is directed.

The return of a *certiorari* ought to be under the ſeal of the inferiour court, or of the juſtice or juſtices to whom it is directed, and if ſuch court have no proper ſeal, it may be under any other ſeal; alſo it muſt be made by the perſon to whom the *certiorari* is directed, to the conſtable or to the recorder of *B.* and it deputy conſtable or deputy recorder returns it (without ſhewing in the return that the principal had power to make a deputy) or to the ſteward of St. *Paul*'s, and the ſtewards of the church of St. *Peter* and St. *Paul* returns it, nothing is removed. *Cro. Eliz.* 821. 1 *Lev.* 311. 2 *Salk.* 479. 1 *Rol. Abr.* 752. 2 *Keb.* 385.

But if it be directed to the juſtice of *Cheſter*, it may be returned by *A. B.* chief juſtice, for the ſame officer is known to be meant in the writ and return, and his deſcription in both is in ſubſtance the ſame. 1 *Sid.* 64. 1 *Lev.* 50. 1 *Keb.* 165. 2 *Salk.* 452.

And ſuch perſon may make what return he pleaſes, but if falſe, he may be ſued.

The perſon to whom a *certiorari* is directed may make what return to it he pleaſes, and the court will not ſtop the filing of it on affidavit of its falſity, except only where the publick good requires it. 6 *Mod.* 90. 2 *Hawk. P. C.* 295. But an action on the caſe lies for the falſe return at the ſuit of the injured party. 6 *Mod.* 90. 2 *Hawk. P. C.* 295.

If after certiorari delivered the in-

After the *certiorari* delivered, if the inferior court proceeds where by law it ought not, it is

a contempt, for which the court will grant an attachment. *Raym.* 186. 1 *Vent.* 66. 1 *Salk.* 144.

Inferiour court proceeds, attachment will be ordered.

Rex againſt *Biſhop & al'*, *May* 20, 1720. It was moved to diſcharge iſſues ſet by commiſſioners of *Sewers*, alledging they had no juriſdiction by the ſtatute 33 *Hen.* 8. *cap.* 5. becauſe this was only a bank thrown up by the ſea; and ordered them to ſhew cauſe, on notice to the clerk of the *Sewers*; though it was doubted whether this could be done by motion, becauſe it was a judgment of the commiſſioners; and no *certiorari* would lie originally to remove their order. *Bunb.* 61.

Iſſues ſet by commiſſioners of Sewers diſcharged on motion.

Between *Debenham* and the ſheriffs of *London*, iſſue being joined a *certiorari* iſſued, directed to the ſheriffs of *London* before whom the record was alledged to be, for the plaintiff to bring in the record. *Eaſter* 25 *Hen.* 6.

Sheriffs of London directed by certiorari to bring in record.

On a *certiorari* the very record muſt be returned, and not a tranſcript of it, for if ſo, then the record will ſtill remain in the inferior court. 2 *Lil.* 253.

On a certiorari, the record itſelf, and not the tranſcript muſt be returned.

Where iſſue is joined in the court below, it is a good objection againſt granting a *certiorari*, and if a perſon doth not make uſe of this writ till the jury are ſworn, he loſes the benefit of it. *Mod. Caſes* 16. *Stat.* 43 *Eliz. cap.* 5.

If iſſue is joined that will be an objection to the certiorari, and if it is not uſed till the jury are ſworn, it is loſt.

The court on motion in an extraordinary caſe will grant a *certiorari* to remove a judgment given in an inferiour court; but this is done where the ordinary way of taking out execution is hindred in the inferiour court. 1 *Lil. Abr.* 253.

In extraordinary caſes courts will grant certiorari, to remove a judgment.

It is grantable in matters of law only.

A *certiorari* is to be granted on matter of law only, and in many caſes there muſt be a judge's hand. 1 *Lil.* 252.

Of prohibitions.

A prohibition lieth where ever an habeas corpus lieth. More frequently to the ſpiritual courts.

A prohibition lies in all cauſes wherein a *Habeas corpus* lieth at common law, but it is moſt commonly granted to the ſpiritual courts. Prohibitions have frequently iſſued out of this office to the ſpiritual courts, to forbid the proceedings, upon a ſuggeſtion that the cognizance of the cauſe before them belongs not to them, but to the court of common law.

But to all courts having no jurisdiction as well after judgment as before.

Any of the king's courts that may award prohibitions, being informed by the plaintiff or defendant, or by any ſtranger, that any court temporal or ſpiritual do hold plea where they have no jurisdiction, may lawfully prohibit that court as well after judgment as before. 2 *Inſt.* 229, 601, 602. 4 *Rep.* 127. *Finch* 450.

Prohibition moved for in this court notwithſtanding a ſuggeſtion had been lodged in the common pleas.

Eaſter 1698. *in Sccio.* MS. *Fribus* and *Squire.* A prohibition was moved for by Mr. *Brown*, after a ſuggeſtion had been lodged in the common pleas and withdrawn; the defendant in the ſuggeſtion oppoſed it, but the court ſaid, when the merits of the cauſe had not been debated in one court it might be moved for in another as it happened here, the ſuggeſtion being withdrawn before the merits were heard.

The court is moved for a prohibition, on a ſuggeſtion and affidavit.

The ſolicitor gets a copy of the proceedings below, and annexes an affidavit to the copy ſetting forth that ſuch copy is a true one, and having brought them to the attorney or clerk in court, he prepares and enters the ſuggeſtion, and the ſolicitor or his clerk in court having

prepared a brief of the ſuggeſtion and affidavit, the court is moved for a prohibition.

If the ſuggeſtion is not proved to the ſatisfaction of the court, they will order a writ of conſultation which is directed to the court below to proceed there.

If the ſuggeſtion is not proved a writ of conſultation is ordered.

But the ſuggeſtion being well proved, a writ of prohibition is ordered, and it is not only directed to the judge of the inferiour court, but alſo to the parties; and if the judge or the party proceeds notwithſtanding the prohibition, an attachment may be had againſt them, or an action upon the caſe.

But if proved a prohibition is ordered, and if they proceed both judge and party will be ſubject to an attachment or action.

But on a prohibition in the ſpiritual court, the party may appear, and to take a declaration upon the ſuggeſtion, and go to trial, and if thereupon it be found againſt the plaintiff in the prohibition, a writ of conſultation ſhall be awarded with coſts. 2 *Lil. Abr.* 384. *Inſt.* 570. 8 & 9 *W.* 3.

If the party appears and takes a declaration on the ſuggeſtion, and the trial is againſt the plaintiff, a writ of conſultation ss awarded with coſts.

The following rules in the cauſe of *Belaſyſe*, Eſq; againſt *Welket* clerk, in *offic' plit'* will further explain what has been ſaid on the ſubject of prohibition.

November 4th 1741. Upon the motion of Mr. *Poole* for the plaintiff, and reading the libel and ſuggeſtion, and other proceedings, and the affidavits of *William Lamb*, and *Edward Heber*, It was ordered that the defendant do ſhew cauſe on *Wedneſday* the 25th inſtant, why a prohibition ſhould not iſſue to the conſiſtory court

Order that defendant ſhew cauſe why a prohibition ſhould not iſſue to the conſiſtory court of York, and that pro-

ceedings ſtay in the mean time.

court of the archbiſhop of *York*, and that all proceedings do ſtay in the ſame uppon notice of this rule given in the mean time.

The ſaid rule made abſolute as to tithe pigs, and pigeons only.

This rule was enlaaged at the inſtance of the defendant, and 12 *February* following, *anno* 1741. on the motion of Mr. *Craiſter* for the defendant, and reading the above mentioned rule, and enlargement of the ſame, and hearing Mr. *Bootle* for the plaintiff; it was ordered, that the ſaid rule be made abſolute, as to tithe pigs, and tithe pigeons only.

Order that plaintiff ſhew cauſe why a writ of conſultation ſhould not go to the biſhop's court, and why defendant ſhould not recover double coſts and damages for him during his ſuit below, purſuant to ſtatute.

On the 12th of *February* following, *anno* 1742. on the motion of Mr. *Craiſter* for the defendant, and reading the above rule of 12 *February* 1741. It was ordered, that the plaintiff ſhould ſhew cauſe on *Saturday* the 23d of *April* then next, why a writ of conſultation ſhould not iſſue to the conſiſtory court of the archbiſhop of *York*, and why the defendant ſhould not recover double coſts, and damages to be aſſigned by the court, againſt the ſaid plaintiff for letting or hindring his ſuit in the ſaid conſiſtory court, purſuant to the ſtatute in that caſe made and provided.

Ordered a writ of conſultation, and damages aſſeſſed to 6 d. and coſts to be taxed;

23 *April* 1743. on the motion of Mr. *Bootle* for the plaintiff, and reading the laſt mentioned rule and the record, and hearing Mr. *Craiſter* for the defendant, and it appearing to this court that the plaintiff hath not proved his ſuggeſtion for a prohibition in due time; It was ordered, that a writ of conſultation be granted to the defendant, and be iſſued forth, and this court did aſſeſs to the defendant ſix-pence damages, beſides coſts to be taxed by the deputy of the clerk of the pleas of this court; and it was further ordered that judgment ſhould be entred for the defendant for double coſts and damages

further ordered that judgment be entred for defendant for ouble coſts.

purſuant

purſuant to the ſtatute in ſuch caſe made and provided.

Judgment was accordingly ſigned under the ſaid rule 18 *May* 1743.

The forms of the ſuggeſtion, prohibition, writ of conſultation, and declaration will be inſerted in the appendix.

As the application for a prohibition, and the cauſes for it are little known among the practicers as well in this court as in the other courts of *Weſtminſter-Hall*, and there are but few books to reſort to which dwell upon this ſubject; the following determinations in the court of exchequer may inſtruct the ſolicitor, both as to what will be neceſſary to be ſuggeſted for obtaining a prohibition, as what cannot be prohibited.

A copyholder of the king's manor ſued in the ecclesiaſtical court for tythes, and ſuggeſting, that he preſcribed to pay a modus, ſhall have a prohibition here.

If a copyholder of the king's manor be ſued in the eccleſiaſtical courts for tithes upon, a ſuggeſtion *in Sccio.* that he preſcribed to pay a certain *modus decimoadi*, he ſhall have a prohibition there, and this *modus* ſhall be tried there. 1 *Rol. Abr.* 539. ſo of the king's farmer. *Lil. Rep.* 525.

Modus pleaded in the ſpiritual court and refuſed, a prohibition ſhall go.

It was ſaid in the caſe of *Hucks* againſt *Phelps*, that if a man libels in the ſpiritual court for tithes in kind, and the defendant in that court pleads a *modus*, and the ſpiritual court refuſes that plea, a prohibition ſhall go: a man may libel below for a *modus*, or for tithes due by cuſtom; but if the *modus*t or cuſtom be denied, the ſpiritual court cannot proceed. *Bunb.* 8. *Trin.* 1716. *Godol. Rep.* 364. *lib.* 11. *Grants C. Hetley* 133. 13 *Cro. Car.* 237. *Latch* 48. 1 *Vent.* 265. *Hob.* 247. 3 *Keb.* 527. *Hard.* 406.

At what time it is or is not too late to come for a prohibition.

This diſtinction was taken, that if a man libels in the ſpiritual court for tithes in kind, and the defendant below ſuggeſts, and inſiſts upon a *modus*, there the ſpiritual court has no juriſdiction to try the *modus*, their method of trial of preſcription being different from ours; but if a man libels for a *modus*, and the defendant admits the *modus*, the ſpiritual court may proceed in that cauſe: but even in the firſt caſe, if they permit them to proceed to ſentence, they come *then*, too late for a prohibition, being it is *pro defectu Triationis* only; but you are never too late, where it is *pro defectu jurisdictionis*. *Lib.* 2. Biſhop of *Winton*, 1 *Sid.* 251. *March* 73. 2 *Salk.* 548. *Offley* againſt *Whitehall*. *Bunb.* 17.

Prohibition to the admiralty granted.

The admiralty granted a warrant according to the courſe of their court to ſeize a ſhip, and before a libel was exhibited, a prohibition was moved for, which was alledged to be too ſoon, the warrant being only in nature of proceſs to bring them into court, and it not yet appearing that the admiralty had no juriſdiction: but it being inſiſted upon of the other ſide, that it was the conſtant practice, not to exhibit any libel on ſuch warrant, but to proceed only on the warrant, and precedents being cited of prohibitions granted in like caſes, a prohibition was awarded *per* lord chief baron *Bury* and *Price* contra *Mountague Bunb.* 9. *Powell* againſt *Richardſon*, *Trin.* 1716.

Prohibition to the admiralty court denied where there was a libel for mariners wages after

Minnett and *Heys* againſt *Anne Robinſon*, *Mich.* 1722. *Ann Robinſon* libels in the admiralty court as adminiſtratrix to her huſband, for his wages due as mariner aboard the Prince Frederick; *Minnett* and *Heys* move for a prohibition, upon a ſuggeſtion that this ſhip was ſeized for

for importing wines from *Holland*, not being *Rhenish* or *Hungarian* wines, and therefore forfeited by the *ſtat.* 12 *Car.* 2. that claim being put in by *Bowen* the maſter, an information was filed by the ſeizor, and *Bowen* pleaded the general iſſue; but before trial *Bowen* ſubmitted, and compounded according to the courſe of the court; and upon payment of one hundred and thirty-ſix pounds to the informer, *&c.* there was judgment *quod vas deliberetur*, *&c.* it was likewiſe ſuggeſted, that the libel was for wages due before the ſeizure. Upon this motion I inſiſted, that the act of parliament, had ſo altered the property of the ſhip, that by the ſeizure, ſubmiſſion to a fine, and judgment *quod deliberetur*, *&c.* upon it, all precedent incumbrances were diſcharged: but the court, upon ſhewing cauſe, diſchared the rule, though they admitted, if there had been a condemnation, that would have been a good ground for a prohibition, and a diſcharge of all precedent incumbrances; therefore quære, for the fine does imply a condemnation, although not actually given, prevented by the ſubmiſſion. *Bunb.* 121. Seizure of the ſhip.

Roberts againſt *Cadd*, *Hil.* 1727. A prohibition to the court of admiralty to ſtay proceedings upon their warrant to arreſt a ſhip, was moved for upon an affidavit, that the contract was at Land; but it was now refuſed *per totam curiam*, though it had been frequently granted in former caſes. Prohibition to the admiralty refuſed, they having altered the forms of their warrant.

Nota; By the direction of this court the admiralty had altered the form of their warrant.

Nota; It was ſaid, the party could not compel them to exhibit a libel there. *Buub.* 247.

Nutkins againſt *Robinſon Feb.* 3 1727. If a churchwarden makes up his accounts, and has them Prohibition for a churchwarden relating to

his accounts are allowed after they have been by a veſtry.

them allowed at a veſtry; if there is a libel againſt the churchwarden in the ſpiritual court, relating to his accounts, a prohibition ſhall go. 1 *Vent.* 367. 1 *Sid.* 281. *Godolp. Rep.* 166. *p.* 16. *Raym.* 418. *T. Jones* 132. *Bunb.* 247.

The like that the ſpiritual court ſhall not afterwards proeecd againſt him to account on oath.

Snowdon againſt *Nutkins*, *Nov.* 1730. Where churchwardens have paſſed their accounts at a veſtry, the ſpiritual court ſhall not afterwards proceed againſt them to account upon oath; ſo held *per totam curiam*, on a motion to diſcharge the rule to ſhew cauſe why a prohibition ſhould not go. *Bunb.* 289.

Prohibition to ſtay proceedings for proctors.

Davies and *Williams June* 11 1724. *Bunb.* 170. Libel in the ſpiritual court for proctors fees; Mr. *Bootle* moved for a prohibition, which was granted; for *per curiam*, where there is a remedy at law the ſpiritual court ought to proceed, and this caſe depends upon a contract and retainer which is triable at law. The caſes cited for the prohibition. 2 *Ro. Abr.* 285. *p.* 37. 3 *Keb.* 441. *Hyde* againſt *Partridge*, 424. *Salk.* 2 *Keb.* 810, 845. Mr. *Welden* againſt the prohibition cited *Regiſt.* 53. 2 *Rol. Rep.* 59. 1 *Mod.* 167. 3 *Keb.* 203. 4 *Mod.* 255. 1 *Vent.* 165. *March.* 45. 5 *Mod.* 238.

The ordinary cannot puniſh a ſingle treſpaſs on the body of the church if it does not hinder divine ſervice.

Binſted againſt *Collins*, *May* 6, 17271 Libel in the ſpiritual court againſt *Binſted* churchwarden (but it did not appear he was ſo in the proceedings) for breaking an hole in the church wall, and cutting down the boughs of a large yew tree in the church-yard. *Nota*; there was a decree in the ſpiritual court for twenty-ſix pounds coſts, *prætu feod' moniiionis & execution' ejuſdem monitionis.*

Per

Per curiam: The ordinary cannot puniſh a ſingle treſpaſs committed on the body of the church, which does not hinder the ſervice, which is the caſe, the ſtatute of *circumſpecte agatis de eccleſia diſco-operta* extends to, and which is not alledged in the libel: the rector who has the freehold in him, has a right to bring his action, and therefore it would be hard to ſubject this man to a double proſecution, and the expence here (though properly coſts) are in the nature of damages; but the plaintiff might, if he thought fit, declare in prohibition. *Bunb.* 229.

Whether a lighthouſe is chargeable to the church-rate.

Sir *Iſaac Rebow* againſt *Bickerton & al'*, *June* 23, 1721. *Bunb.* 81. This was a prohibition to the ſpiritual court of the biſhop of *London*, where a libel was exhibited againſt Sir *Iſaac* to oblige him to contribute towards the repairs of the church, in reſpect of a lighthouſe erected for the benefit of navigation at *Harwich*, which recovered a toll and duty from ſhips paſſing, *&c.* upon a demurrer to the declaration the court this day gave their opinion, and two points were made; firſt, Whether they were not too late to come for a prohibition after the ſentence below, and an appeal to the delegates; ſecondly, Whether the thing in its own nature was rateable towards the repairs of the church: and in both points Lord chief baron *Bury*, *Montague* and *Page*, were of opinion for the plaintiff in prohibition; baron *Price* contrary in both points, and cited in ſupport of his opinion, *Lib.* 2. biſhop of *Winton*, *Cro. Eliz.* 571. 2 *Rol. Abr.* 319. *Farewell*, 2 *Lutw.* 1022. *Dawſon* and *Nicholſon*, in *Sccio. Mich.* 1710. 2 *Ro. Rep.* 42. Dr. *Prideux's Office of Church-wardens*, *Yelv.* 173.

Not too late to come for a prohibition, after ſentence below, and an appeal to the delegates.

For the plaintiff on the firſt point. *Cro. Car.* 394. *Hetley* 61. *Hard. Terry* againſt *Huntingdon & al. Latch Davies*'s caſe, 141. 2 *Salk. Gardener* and *Brook* 548. On the ſecond point, 2 *Rol. Abr.* 262, 270, 255. 2 *Ro. Rep.* 270. *Moor* 474. *Stat.* 8 *Eliz. cap.* 13.

The marriage of a man with his firſt wife's mother's ſiſter prohibited, being within the Levitical degrees.

Butler and wife againſt *Gaſtrell*, *Feb.* 8, 1723, 4. *Bunb.* 145. *John Butler* was libelled in the ſpiritual court of *Cheſter* for inceſt, in marrying *Elizabeth Lounds*, who is the ſiſter of the mother of *Hannah Butler*, alias *Berrington* deceaſed, who was the late wife of the ſame *John Butler*, who in *Mich.* term 6 of *Geo.* came and ſuggeſted for a prohibition, that his marriage with *Elizabeth* his firſt wife's mother's ſiſter was lawful, *ac per legem Leviticalem minime prohibitum*, and was lawful and good by the ſtatute; and that although he had pleaded this matter, and offered to prove the ſame, yet the defendant refuſed to admit that plea, and endeavours to diſſolve the marriage *contra divinam ſententiam*, *in Regis contemptum & exhæreditationem & contra formam ſtatuti*; and upon hearing counſel on both ſides, the court ordered the plaintiffs to declare in prohibition, that it might come judicially before the court, and be determined in a ſolemn manner. And it was argued by Mr. *Bunbury* on the ſide of the defendant, that a conſultation ought to be granted.

An objection was taken to the declaration, that there is no expreſs averment that the marriage was *extra Gradus Leviticales*; for theſe words in the firſt part of the declaration (before the libel) *Cumque matrimonium prædict' inter prædict' Johannem & Elizabetham fuit et eſt matrimonium extra Leviticales gradus*, are only by way of recital, and do not amount to an averment. But notwithſtanding this objection, the court this

day

day gave judgment (upon the merits of the queſtion before them) that this was a marriage within the Levitical degrees.

If there be aunt and neice, and a man marries one of them, he cannot afterwards marry the other, let him marry which he will firſt.

Lord chief baron *Eyre* ſaid, If a man cannot marry his own aunt, he cannot marry his wife's aunt; and if there be aunt and niece, and a man marries one of them, he cannot afterwards marry the other; let him marry which he will firſt, it makes no difference; and he thought the caſe of marrying the firſt wife's mother's ſiſter, a much ſtronger caſe, and ſaid the caſe of *Snowling* againſt *Nurſey* was a proper foundation for the court's preſent determination; but ſeemed to think that the parochial tables were not binding upon the laity.

Baron *Price:* I am of the opinion, that this is a marriage within the Levitical degrees, and that this caſe is not to be diſtinguiſhed from the marriage with the firſt wife's niece.

Baron *Page:* I am of the ſame opinion, and there is no difference whether you marry the aunt firſt or the niece firſt.

Baron *Gilbert:* I am of the ſame opinion, the ſtatute has ſet the bounds to the ſpiritual court, which are the Levitical degrees.

The Levitical computation is the ſame as the civil law computation: by the law of God a marriage in the third degree is inceſtuous, and all marriages within the third degree have been conſtrued to be within and prohibited by the ſtatute, and the canon goes ſo far as to ſhew the ſenſe of the church of *England* as to the expoſition of the Levitical law; and *per tot. cur'* a conſultation was awarded, *Feb.* 8, 1723-4.

The Levitical computation is the ſame as the civil law computation, and all marriages within the 3d degree have been conſtrued to be within, and prohibited by the ſtatute.

Ferguſon againſt *Cuthbertſon*, *January* 23, 1728. *Bunb.* 260. Suit in the ſpiritual court for words, Thou

Prohibition denied for

art a jilt and a ſtrumpet.

for ſaying, Thou art a jilt and a ſtrumpet; a prohibition was moved for, but denied *per curiam.*

Prohibition to the ſpiritual court for words, refuſed after ſentence.

Head and wife againſt *Winter*, *Feb.* 1, 1731. *Bunb.* 312. Libel in the ſpiritual court for theſe words; *Moll Winter* is a whore, and a common whore, and plier in a bowdy-houſe; and there was a ſentence againſt the defendant for penance, and for coſts, and excommunication denounced purſuant to the ſentence.

A prohibition was moved for, on a ſuggeſtion that the words were ſpoken in *London*; but *nota*, upon the face of the libel it appeared, that the words were ſpoken in the pariſh of in the dioceſe of *London*, ſo that tho' it might be in the dioceſe, yet it did not follow it was in the city, as in truth that part of the pariſh where the words were ſpoken is in *Middleſex*, and therefore it was inſiſted for the defendant in prohibition, that it was too late after ſentence to come for a prohibition; and of that opinion was the whole court, and diſcharged the rule to ſhew cauſe why a prohibition ſhould not go.

Too late after ſentence to come for a prohibition.

Cited for the plaintiff in prohibition, 1 *Vent.* 343, 352. *Nota*; Theſe were before ſentence cited for the defendant *Offley* againſt *Whitall*, *Mich.* 1717. 2 *Salk.* 548. *March* 73. *Stat.* 23 *Hen.* 8. *cap.* 9. 2 *Rol. Abr.* 318. *l.* 1, 2. 1 *Vent.* 61, 243.

Plaintiff not having proved his ſuggeſtion for a prohibition, ordered a conſultation, and judgment with double coſts by the ſtatute.

Eaſter 16 *Geo.* 2. *in Sccio. MS. Belaſyſe* againſt *Wecket* clerk. On motion for the defendant it appearing to the court that plaintiff had not proved his ſuggeſtion for a prohibition in due time, ordered a writ of conſultation to be granted to defendant, and that the court aſſeſs 6*d.* damages, beſides coſts to be taxed, and further ordered that judgment be entred for defendant

for

for double coſts and damages purſuant to the ſtatute, *&c.*

Anonymous Lane's Rep. in Sccio. 16. *Hil.* 4 *Jac.* If a man ſue in the eccleſiaſtical court for tithes of headlands, the defendant may have a prohibition, but by ſome he ought to ſuggeſt that they are but ſmall headlands, and that there is a cuſtom of diſcharge in conſideration that he paid tithes in kind of meadows, and in this caſe *Williams* ſaid, that if a man keep ſheep in one pariſh until ſhearing time, and then ſell them into another pariſh, in this caſe the vendee ſhall pay the tithe wool to the pariſh where they were depaſtured in the greater part of the time of the growing of the wool. See the *Tithing Table* the fifth queſtion.

A prohibition may go for a ſuit in the eccleſiaſtical court for tithes of headland.

Lane's Rep. in Sccio. 39. If a copyholder of the king's manor pretendeth preſcription for a *Modus decimandi* againſt the parſon, the right of tithes ſhall be tried in the exchequer, and a prohibition was granted to the eccleſiaſtical court in this caſe.

Copyholder of the king's manor ſhall have a prohibition to try the right of tithes by preſcription in the exchequer.

Sir *Richard Minſhall* and *Spicer*, *Mich.* 1658. *in Sccio. Hard.* 131. Upon a ſuggeſtion to have a prohibition to the court for probate of wills, *&c.* to ſtay the probate of a will of lands and goods, becauſe the teſtator was *non compos.* The court declared, that unleſs the plaintiff would go to iſſue this term *compos* or *non compos*, they would not grant a prohibition.

Prohibition to ſtay a probate, becauſe the teſtator was non compos'

Spark againſt *Stafford*, *Paſ.* 13 *Car.* 2. *in Sccio. Hard.* 183. Upon a prohibition prayed to the court of admiralty; the caſe was, that the defendant being maſter of a ſhip, of which the plaintiff was owner, the ſhip was taken by pirates

Prohibition denied to the Admiralty, becauſe the original cauſe aroſe upon the

ſea, and whatſoever followed was but acceſſory and conſequential.

pirates upon the ſea; and to redeem himſelf and his ſhip, he contracted with the pirate to pay him 50*l.* and pawned his perſon for it: the pirate carried him to the *Iſle of Scilly*, and there he paid it with money borrowed, and gave bond for the money; and at his return after the redemption of both his ſhip and himſelf, he ſued in the admiralty for the 50*l.* and had a ſentence for it; and the prohibition was denied, becauſe the original cauſe aroſe upon the ſea, and whatever followed was but acceſſory, and conſequential; and therefore well determinable in the court of admiralty.

Prohibition ordered quoad the land to the delegates, the plaintiff having brought his action to try his title to the land, and the validity of the defendant's will.

Hobart againſt *Barrow*, *Mich.* 14 *Car.* 2. *in Sccio. Hard.* 313. A prohibition was moved for to the delegates, upon a ſurmiſe that the will in queſtion concerned lands; upon which the caſe appeared to be thus; *viz.* There was a will proved in common form, and afterwards the plaintiff ſuggeſting that the teſtator had made another will, and a conteſt ariſing upon it, the ſecond will was ſentenced to be his will, from which ſentence there was an appeal to the delegates: and a prohibition was now prayed to them *cauſa qua ſupra*; *viz.* becauſe the teſtator had diſpoſed of lands by his will; which is a good ground for a prohibition *prima facie*. 6 *Rep. Mountague*'s caſe; *Brett* and *Netter*'s caſe, *Cro. Car.* and *Dennie*'s caſe, *ibid.* which was in caſe of an appeal, as our caſe is.

Hale chief baron: The courſe was at firſt to grant a prohibition upon all ſuch ſuggeſtions, and if upon the trial it appeared that nothing was diſpoſed of in the will, but land, then the prohibition was perpetual: but if there were a perſonal eſtate, and an executor in the caſe, then a conſultation was awarded *quoad*, *&c.* afterwards

terwards upon ſuggeſtion that the will concerned lands and goods, a prohibition was uſed to be granted only *quoad* the land. But of later times, upon a ſuggeſtion that the will diſpoſed of lands, if the perſonal eſtate were concerned likewiſe, they have uſed to deny a prohibition, becauſe the party is at no prejudice by it with reſpect to the land; the probate in the ſpiritual court being no evidence againſt him at law for the land. And the executor would be at a prejudice, if a prohibition ſhould iſſue; becauſe then the executor would be hindred from proving the will, before which he cannot ſue for a debt due to the teſtator, which may be a means to diminiſh the eſtate; *ſed adjornatur.*

Being moved on another day in the ſame term, many precedents were cited for the granting prohibitions *quoad* the land. But *per Hale* chief baron; There ought not to be a prohibition upon this ſuggeſtion: becauſe in this cauſe the ſuit before the delegates is only to put the party into a condition of doing the ſame thing which the plaintiff himſelf has done already, *viz.* to prove his will; and it is grounded upon an act done by the plaintiff himſelf; and if it were not proſecuted, the defendant would have no means of proving his will, being tied up with a prohibition; which is unreaſonable. But becauſe the plaintiff had brought his action here to try his title to the land, and the validity of the defendant's will; and offered to proceed in it with effect, the court ordered a prohibition *quoad* the land, unleſs the parties would conſent to be concluded by the probate. And the like was done in another caſe in this court betwixt *Minſhaw* and *Spicer.*

King

A refuſal to give a copy of the libel in the ſpiritual court, a good cauſe of prohibition, or where a libel is too general.

King againſt Sir *Edward Lake*, *Eaſter* 16 *Car.* 2. *in Sccio. Hard.* 364. In a prohibition upon an excommunication, for not anſwering upon oath to articles exhibited againſt him, and for not taking the oath of a churchwarden to preſent upon all the articles contained in a book thereunto annexed, amongſt which there were ſome that would oblige him to accuſe himſelf: It was held *per curiam*, that a refuſal to give a copy of the libel is a good cauſe of prohibition: or where a libel is too general, as for certain offences. *Vide F. N. B.* and *Collins* and *Hunt*'s caſe, *Cro. firſt Rep.* and that ſuch recognizances and oaths, as may be taken and adminiſtred there, are only *in cauſis matrimonialibus & teſtamentariis:* but that the citation needs not contain the cauſe of action, though the libel muſt, and that ſince the late ſtatute of 13 *Car.* 2. no man ought to have an oath adminiſtred to him to preſent or accuſe himſelf, or to be ſworn to a book, that contains ſuch matter *inter alia*; and if a man be excommunicated for not anſwering to articles that he ought not to be put to anſwer to, that it is a good cauſe of prohibition. And if he be not abſolved upon requeſt, without being obliged to take an oath *de parendo mandatis eccleſiæ*, an attachment lies: for that ſuch oath ought not to be tendred, but where the cauſe, upon which the party is excommunicated, is proper for the ſpiritual court. And that no man at this day ought to be ſworn upon articles exhibited againſt himſelf, and that churchwardens ought to be ſworn to do what appertains to their office, and no more. And if the eccleſiaſtical court proceed againſt them for matter not within their juriſdiction, that an action upon the caſe lies.

No man ought to be ſworn to articles exhibited againſt himſelf.

And that upon a contempt to the citation remedy lies in the ſpiritual court; and the like for contumelious words, if ſpoken in court, but not if the words were ſpoken elſewhere.

Dawſon againſt *Fowle*, *Mich.* 16 *Car.* 2. *in Sccio. Hard.* 378. In a prohibition to the Arches, where there was a libel grounded upon an election of churchwardens in *St. Michael's* pariſh in *Creoked-Lane*, contrary to cuſtom, by a ſelect veſtry, choſen by the biſhop of *London*, and without the pariſhioners.

Churchwardens are lay incorporations, and to many purpoſes are temporal miniſters and officers, and their election is by cuſtom, on which iſſue may be taken, whether by a ſelect veſtry or by the whole pariſh.

Doctor *Walker* argued for the defendant, that it was a void cuſtom, *&c.* which may be read in the report. *Hale* chief baron ſaid, There are at leaſt thirty precedents to the contrary. And for reaſons; firſt, churchwardens are lay incorporations; and to many purpoſes they are temporal miniſters and officers; as appears by many acts of parliament. 43 *Eliz.* concerning the poor and maimed ſoldiers, *&c.* ſecondly, the claim here is by cuſtom, which is determinable at common law only: ſo in caſe of the election of a pariſh clerk by cuſtom of common right, every pariſh ought to chuſe their own churchwardens; but becauſe the manner of election varies and is uncertain, a cuſtom may be alledged; and iſſue may be taken whether a ſpecial and ſelect veſtry, or the whole pariſh ought to chuſe their churchwardens; and that would be a proper iſſue. *Et adjornatur quouſque*, and proceedings in the Arches to ſtay in the mean time.

Stillingham againſt *Scott*, *Mich.* 16 *Car.* 2. *in Sccio. Hard.* 379. In a prohibition to the Arches

Prohibition on ſtatute of 23 Hen. 8. againſt ſuing men out

of their dioceſe.

Arches upon a libel for defamatory words exhibited againſt the plaintiff, who was of *London* dioceſe, and not within any of the thirteen pariſhes, which are exempt from the juriſdiction of the biſhop of *London*, and ſubject to the archbiſhop of *Canterbury* as ordinary: the prohibition being grounded upon the ſtatute of 23 *Hen.* 8. *cap.* 9. againſt ſuing men out of their dioceſe, the court of Arches not being within the juriſdiction of the dioceſe of *London*, though within the precinct.

Hale chief baron: The prerogative court is not reſtrained; for it is excepted out of the act of parliament: but the court of Arches is not excepted, and doctor *James*'s caſe is expreſly the point. *Hob.* 17. And if the ſuit be well begun there, yet it cannot be pleaded here before the prohibition granted, but afterwards; as in *Latch* 180. *Et adjornatur.* And the proceedings in the ſpiritual court to ſtay in the mean time.

Prohibition to ſtay excommunication for nonpayment of proxies and procurations denied, becauſe not within the ſtat. of 34 Hen. 8. c. 19.

King againſt doctor *Lake*, *Mich.* 16 *Car.* 2. *in Sccio. Hard.* 388. In a prohibition to ſtay an excommunication for not paying proxies and procurations; the ground of the prohibition was, becauſe by the ſtatute of 34 *Hen.* 8. *cap.* 19. all ſuch archbiſhops, biſhops, archdeacons, *&c.* as have right or title to claim any penſions, portions, corodies, indemnities, ſynodals, or proxies, againſt any perſons to whom the king had or ſhould grant the lands, tenements, *&c.* charged therewith, with a clauſe of diſcharge, *&c.* ſhould ſue for their remedy and recovery thereof in the court of augmentations, now annexed to the court of exchequer, and not elſewhere: and the lands in this caſe were granted by patent, diſcharged, *&c. ſed non allocatur*

per curiam, Becauſe the act extends only where particular eſtates are granted over, as appears by the words of the act; any ſale, gift, grant, or leaſe for term of life, or lives, or years; and not where the fee is granted, as was in this caſe.

Prohibition denied upon an excommunication for not receiving the ſacrament in his own pariſh church; the whole proceedings being merely ſpiritual, and of eccleſiaſtical cognizance.

Lionel Copley's caſe *Paſ.* 17 *Car.* 2. *in Sccio' Hard.* 406. *Lionel Copley* Eſq; prayed a prohibition to the archdeacon's court at *Doncaſter* in *Yorkſhire*, upon an excomunication againſt him for not receiving the ſacrament in his own pariſh church, grounded upon a preſentment made by the church-wardens in 1664. The ground of his prayer was becauſe he had alledged, and ſhewn to the official a certificate, that he had taken it in another place; and the court held, that the eccleſiaſtical court had conuſance of the cauſe, and had good cauſe to proceed upon the preſentment *prima facie*, becauſe the party had not received the communion there, *viz.* in his own pariſh church; and that it lies on his part to prove that he received it elſewhere, and if he did really receive it elſewhere, it is a good plea for him in the eccleſiaſtical court; upon the refuſal of which plea a prohibition lies, but not elſe, and becauſe it did not appear to the court, that Mr. *Copley* had pleaded it in the ſpiritual court, nor was there any affidavits made of it; for that reaſon the court denied to grant a prohibition at that time, but would adviſe.

Afterwards in *Trinity* term he ſuggeſted that he had alledged in the ſpiritual court, that he took the ſacrament elſewhere, and that the court had refuſed to admit of the allegation; and thereupon he now prayed a prohibition. But the attorney, and ſolicitor general moved, that no prohibition ought to go out in this

caſe, becauſe the matter is purely ſpiritual, and of eccleſiaſtical cognizance; and no temporal matter ariſes in the cauſe, and if the ſpiritual court does not do juſtice in it, an appeal lies.—They alledged farther, that if the original cauſe be of ſpiritual cognizance, and ſome incident dependant matter ariſe, as a leaſe or livery of ſeizin, which in their own nature are of temporal cognizance, and ſuch matter be pleaded there and refuſed; yet a prohibition ought not to be granted; and for that they quoted 12 *Co. Rep. Roberts*'s caſe: and that in no caſe whatſoever a prohibition ſhall be granted for any temporal matter ariſing in a cauſe, before refuſal, where the original cauſe belongs to their juriſdiction, but only in the caſe of a *modus*. *Vide* 8 *Ed.* 4. and 2 *Rep.* the biſhop of *Wincheſter*'s caſe, and the reaſon of that is, becauſe the court chriſtian does not allow of any *modus*; and becauſe the *modus* itſelf, if there be any, may and ought to be ſued for there.

Hale chief baron denied the ground that they went upon, and ſaid that if the law were ſo, then if a ſuit were well commenced there, the temporal courts could not determine any matter ariſing in it, which is not true; and ſaid, that their refuſal of a plea that contained matter of temporal cognizance, had always been admitted to be a good ſuggeſtion for a prohibition. But the difficulty here was (he ſaid) that all the matter both of the plea and the libel, was ſpiritual and of eccleſiaſtical cognizance; and that that court had a juriſdiction therein appeared by the rubric, confirmed by act of parliament, whereby it is appointed that three times in a year, of which *Eaſter* to be one, all

A refuſal of a plea that contained matter of temporal cognizance, had always been admitted a good ſuggeſtion for granting a prohibition.

perſons ſhall receive the communion; and hereupon *adjornatur*.

And afterwards being moved again, the court denied to grant a prohibition becauſe the cauſe was purely ſpiritual, and they proper judges of the certificate, and if they refuſed the plea an appeal would lie; but no prohibition. Moreover they ſaid, that the allegation in the certificate, that he had received the communion *alibi*, was not ſufficient, becauſe by the rubric he ought to receive it three times a year, and ſo the effect of the libel not anſwered.

Prohibition on a preſentment for not coming to church, being cited out of the dioceſs.

Doctor *Blackmore*'s caſe, *Trin.* 17 *Car.* 2. *in Sccio*', *Hard.* 421. He prayed a prohibition for that he was preſented in the archdeacon's court of *Canterbury*, and there preſented for not coming to church at *Biddendon* in the county of *Kent*, whereas he dwelt and was inhabitant in *Suſſex*, out of the dioceſs; and yet was cited to appear there, contrary to the ſtatute of 23 *Hen.* 8.

In oppoſition to which the acts and proceedings in the court chriſtian were produced and ſhewn, which expreſs him to have been cited within the dioceſs, and that he was reſident there at the time of the offence committed.

And hereupon the court declared, that if a man be cited within the dioceſs, though he be not an inhabitant there, but only comes there to trade, or otherwiſe, that this is not within the ſtatute of 23 *Hen.* 8. And that if it were otherwiſe, there might be offences committed againſt the eccleſiaſtical law, which would not be puniſhed at all. For men would offend in one county, and then remove into another, and ſo eſcape with impunity. But becauſe it was

alledged, that he was really cited out of the dioceſs, and that it would be made appear to the court, *adjornatur*.

A ſhip being infra corpus comitatus the Admiralty has nothing to do with it, nor can make ſtipulations concerning it. But if ſuper altum mare the caſe will be different.

Juſtice againſt *Brown*, adminiſtrator of his wife who was executrix of her former huſband *Jenoways*, *Hard.* 473. *Hil.* 19 & 20 *Car.* 2. *in Sccio'*. Upon a ſuggeſtion for a prohibition to the admiralty, the caſe appeared to be thus: *viz.* the ſaid *Juſtice* and others had 3 parts of a ſhip, lying in the *Thames* at *Ratcliff* in the county of *Middleſex*; and the ſaid *Jenoways* had the 4th part.—The owners of the three parts were for having the ſhip go a voyage, but *Jenoways* would not agree to it. Hereupon the owners of the 3 parts petitioned the judge of the admiralty, againſt the owner of the 4th part, to compel his aſſent. But the judge would not compel him. But the court of admiralty by way of ſtipulation, took a re-cognizance of 200 *l.* penalty to the uſe of *Jenoways*, that the ſhip ſhould return from the intended voyage within eighteen months, or elſe that the owners of the 3 parts ſhould pay the owner of the 4th part, the value of his 4th part. Hereupon the ſhip goes to ſea, on the account of the owners of the 3 parts, and never returns. *Jenoways* dies and makes his wife executrix; ſhe takes huſband and dies inteſtate; the huſband takes adminiſtration of his wife's eſtate, and ſues *Juſtice* upon the recognizance in the admiralty, and has ſentence againſt him there: whereupon he prays a prohibition.

Firſt, becauſe the court of admiralty has no power to make ſuch a ſtipulation, whereby to bind the intereſt of another party againſt his will.—Secondly, becauſe the ſuit upon the recognizance is not determinable in the admiralty, for

for that it was taken *infra corpus comitatus*; and for that the ſhip was there too at the time of the ſtipulation and recognizance taken. Thirdly, becauſe at the time of the taking this recognizance, there was no libel nor ſuit depending in that court. Fourthly, becauſe the plaintiff here can have no title as adminiſtrator to his wife, but muſt ſue as adminiſtrator *de bonis non* of *Jenoways*. Fifthly, becauſe the ſecurity being joint, one only is proſecuted upon it.

The chief baron ſaid, That the objection to a prohibition drawn from inconvenience and antiquity was of no great force; for the ſame objection might be made in caſe of charter-parties, and contracts made upon land, for freight and voyages; and yet the court of admiralty, has nothing to do in thoſe caſes. By the ſtatute of 15 *Richard* the ſecond, nothing tranſacted upon land or *infra corpus comitatus* is to be tried in the admiralty; and uſage before or after, will not take away the force and effect of an act of parliament. And here the ſhip being *infra corpus comitatus*, the admiralty has nothing to do with it, nor any part of it, no more than in other caſes ariſing aſhore. Beſides, this recognizance ſeems to be void: for it is not in the nature of bail, to compel a perſon to appear to an action, and *ſtare judicio*, but by way of ſtipulation and contract between the parties, nor is it an incident to, or dependant upon any ſuit there. For if ſo, perhaps it might be good, if it were uſually taken: and ſuppoſe in this caſe, that he who has but a 4th part would ſet fire to the ſhip; there would be no remedy in the admiralty. Neither is there any remedy there, if he will not conſent, ſo

long as the ſhip is *infra corpus comitatus*; but if it were *ſuper altum mare* the caſe would be different. And the uſage of the court of admiralty, in ſuch caſes is nothing to the purpoſe. For it is very well known, that the ordinary has uſed time out of mind to cauſe an adminiſtrator to make diſtribution: and precedents have been cited for it, from the time of king *Canute*, and ſo downwards: and yet the court of king's bench grants prohibitions, and denies a conſultation, becauſe by the ſtatute of *Edw.* 3. it is within the conuſance of the common law; ſo here; beſides if there be but *probabilis cauſa* for a prohibition, it muſt not be denied, *ex debito juſtitiæ*; for if it be granted where it ought not, the adverſe party has remedy by conſultation, or other means to relieve himſelf againſt it: but if it be denied where it is grantable, the party is without remedy. But becauſe this was a caſe of great conſequence, and no precedent was ſhewn of any prohibition granted in ſuch caſe, time was given to the firſt *Saturday* in *Eaſter* term, to adviſe upon the matter; and in the mean time all proceedings in the admiralty were to ſtay by conſent. See *Str.* 890 *Carth.* 26.

Prohibition againſt the court of Chancery in the cinque ports to ſtay their proceedings on a decree there, not to proceed at law in this court.

Sir *John Williams* againſt *Liſter & al'*, *Hil.* 19 & 20 *Car.* 2. *in ſcio'*, *Hard.* 475. Upon a prohibition the caſe was thus, *viz.* the plaintiff brought treſpaſs here by *quo minus* againſt the defendant, for digging in his ſoil and cloſe in St. *John*'s in the iſle of *Thanet* in the county of *Kent*; to which not guilty was pleaded. And then the defendants preferred their Bill in the chancery of *Dover* within the *Cinque ports*, ſuggeſting that there is and had been *Temps dont*, *&c.* in St. *John*'s a pier called *Margaret pier*,

pier, and that the pier wardens had uſed time out of mind to dig there for gravel, ſand, *&c.* for repairing the pier, and for the ſafety and preſervation of ſhips and ſhipping, and that by ſeveral orders and decrees of the lords wardens of the *Cinque ports*, it had been ſo ordered and put in execution; and to have the benefit of that cuſtom, and of thoſe orders and decrees, and to ſtop further proceedings at law, was the ſcope of the Bill. To which the now Plaintiff anſwered, denying that he knew any thing of ſuch cuſtom, or of ſuch orders, and upon hearing the cauſe in that court of chancery, upon proofs, the plaintiff Sir *John Williams*, was decreed not to proceed in his cauſe here, and to pay 13 *l.* coſts to the defendant; upon which he prayed a prohibition.

And *per curiam* a prohibition lies: for it is not in the power of any inferior court to ſtay proceedings in a cauſe, that is firſt attached there: and a *quo minus* lies in the *Cinque ports* as well as within a county palatine or in *Wales*: and rather in the *Cinque ports* than in a county palatine; becauſe a county palatine has *jura regalia* within itſelf. And it is uſual to grant prohibitions into counties palatines, and ſo it was done laſt term to the county palatine of *Lancaſter*, upon a ſuit commenced here by *quo minus:* and afterwards, a bill preferred there to ſtay it; and ſo it would be if a ſuit were commenced in the admiralty there againſt law, a prohibition would lie: and the king's debtor has the ſame privilege that the king has, to ſue for his debt where he will. It would elſe be very inconvenient, if a private juriſdiction might do what they would, and there would be no remedy elſewhere: and *Yelv. Rep. Criſpe*

and *Verall*'s caſe was cited, which was in caſe of an appeal of death, the party being ſlain within the *Cinque ports*; and yet the appeal brought in *B. R.* the party being in *cuſtod. mariſchal.* and a debtor here has the ſame privilege.

The defendants perceiving the opinion of the court offered to ſurceaſe further proceedings in the chancery of the *Cinque ports*; and to go to trial upon the cuſtom in this action, having liberty to alter their plea, and to plead the cuſtom; and ſo it was ordered.

Prohibition to the admiralty for not receiving the plea of the ſtatute of limitations;

Berkley & Morrice, *Mich.* 20 *Car.* 2. *in Sccio. Hard.* 502. Upon a prohibition prayed to the admiralty, the caſe appeared to be this *viz. Morrice* was captain of a private man of war, in which *Berkley* had an intereſt; and *Morrice* took a merchant ſhip beyond the line, laden with divers merchandiſes: *Berkley* ſued *Morrice* in the court of admiralty to have an account: *Morrice* pleaded there the ſtatute of 21 *James* 1. of limitations, the cauſe of action being of more than ſeven years ſtanding before the ſuit commenced, as appeared by the libel. And now *Morrice* ſuggeſted, that the court of admiralty would not receive that plea, and therefore prayed a prohibition, and the court held, that the plea ought to have been received, for that the ſaid ſtatute was pleadable there; and if it were not received, that the rejecting it was a good cauſe to have a prohibition; and likewiſe if they receive it, and do not give ſentence thereupon, as the common law requires.

but a prohibition lies not before refuſal.

But a prohibition lies not before refuſal; becauſe the original matter is examinable there. The counſel on the other ſide urged, that the reaſon why the ſuit was ſo long delayed, was, becauſe of *Morrice* his abſence beyond ſea; to which

which the court replied, That the abſence of the defendant was not material; for the act provides for the abſence of the plaintiff only; *et adjornatur.*

Prohibition to Cheſter the chamberlain being intereſted in the ſuit.

Inter Brookes and the earl of *Rivers*, *Mich.* 20 *Car.* 2. *in ſccio. Hard.* 503. A prohibition was prayed to *Cheſter*, to ſtay a ſuit there depending by *Engliſh* bill, in which the earl of *Rivers* was plaintiff againſt *Brookes* defendant, concerning the title to ſome ſalt pits: the ground upon which the prohibition was prayed, was, becauſe the earl of *Derby*, who was chamberlain of *Cheſter*, and judge there, had an intereſt in the ſalt pits; and the court held, that where a judge has an intereſt, neither he, nor his deputy can determine a cauſe, or ſit in court; and if he does, a prohibition lies. But becauſe it did not appear upon examination, that the chamberlain had an intereſt, therefore a prohibition was not granted in this cauſe: though it appeared that the earl of *Rivers* had married the earl of *Derby*'s ſiſter; for favour ſhall not be preſumed in a judge. *Vide Co.* 12 *Rep.* 114. The earl of *Derby*'s caſe accordant upon a ſuit in *Cheſter*, in which the ſaid earl was concerned.

Coſts ought not to be taxed in the eccleſiaſtical court ex officio judicis & per inſtantiam curiæ, though a perſon be aſſigned by the court to proſecute.

Browne againſt Sir *Edward Lake*, *Mich.* 20 *Car.* 2. *in ſccio. Hard.* 503. *Browne* prayed a prohibition to the eccleſiaſtical court of *Lincoln*; becauſe he was proſecuted there *ex officio* upon articles exhibited againſt him, for not coming to church, and for ſitting irreverently there when he did come, and becauſe they taxed coſts againſt him, and the court doubted, whether coſts ought to have been taxed in this cauſe, becauſe it is not a cauſe betwixt party and party; but promoted *ex officio judicis*, and *per inſtantiam curiæ*, though a perſon be aſſigned by the

the court to proſecute it: and afterwards, by the mediation of the court, the coſts were mitigated; and the party ſubmitted to pay them, and to conform to the laws of the church.

No cauſe for a prohibition to the ſpiritual court to ſtay proceedings upon a cuſtom that the conſtable ſhould collect the church rates, unleſs they proceed in the trial of it contrary to the courſe of the common law.

Goddin againſt *Wainewright*, *Eaſt.* 21 *Car.* 2. *in Sccio. Hard.* 510. a prohibition was prayed to the ſpiritual court, to ſtay proceedings upon a libel grounded upon a cuſtom, that the conſtable of the town ſhould collect the rates aſſeſſed for repairs of the church, which the conſtable refuſed to do: the reaſon offered for a prohibition was, becauſe it was not triable there whether the party were conſtable or not, and duly elected or not? but the court denied to grant a prohibition, becauſe this matter is pleadable there; and a prohibition lies not, unleſs upon trial of it there, their law and proceedings croſs the common law; and in that caſe a prohibition lies only till trial here, and after that a conſultation ſhall be granted, as when a releaſe is pleaded there; this is no cauſe for a prohibition, unleſs they proceed in the trial of it, contrary to the courſe of the common law.

The ſequel.

Sequel.

Having now finiſhed what it is hoped will prove ſufficient to explain the ſeveral proceedings in general caſes, from the commencement of the ſuit to judgment and execution; there ſeems very little more wanting, than to ſhew what other matters may be thought worthy the ſolicitor's notice, and what (being entirely unknown to him, and occaſioned in a great meaſure by the ſilence of the law books) may elucidate

cidate the ſubject, and perhaps be uſeful in its conſequences, as well to the office in general, as to the ſolicitor in particular.

Of judgments by confeſſion.

Judgments by confeſſion are frequent in the office on warrants of attorney, and with good reaſon, as no fine is paid to the king thereupon.

Of ſearching for judgments.

In ſearching for judgments no agency fees are deducted out of the ſolicitor's fees of 4 *d.* per term, where the application is made to any one of the attorneys or clerks in court in the firſt inſtance.

In ſearching for judgment a ſaving to the ſolicitor might be made.

Of inrolling deeds, &c.

Inrolling deeds and other writings, to prevent the ill conſequences of loſſes by fire, or other unforeſeen accidents, are frequently and as effectually done in this office, as in any other of the courts of *Weſtminſter-hall.*

Inrolling deeds.

Divers inrollments of letters patent of commiſſions *de quorum nomina*, or writs of aſſiſtance, and of wills are to be found in 30, 31, & 47 *Edw.* 3.

Letters patent and commiſſions de quorum nomina.

Divers indentures between the king and the ſubject in 47 *Edw.* 3.

Indentures between king and ſubject.

Divers writs of protection and writs of liberate. *Hil.* 14 *Hen.* 8.

Writs of protection and liberate.

Recognizances.

A recognizance to the Prince of *Wales*, acknowledged by *John Littlebury*, with condition to make a true account. *Hil.* 2 *Hen.* 4.

Charters of moniars.

The charter of the moniars of *London* and *Canterbury*, made by *Edward* the firſt, and confirmed by *Edward* the ſecond, and *Henry* the fourth, in *Hil.* 2 *Hen.* 4.

and of wardſhips &c.

Divers charters of wardſhips, knights fees, and other regalities, 31 *Edw.* 3.

of cities, towns and other corporations.

There were heretofore very many charters inrolled, and more particularly in *Edward* the third's reign, ſuch as *carta burgens' de Dorcheſt. carta abb'is de Coggeſhall, carta prior de Newnham, carta prepoſiti Sce. Eliz. Wynton*; all which charters may be thought uſeful to become more public, as the repertories of thoſe times are in tolerable good order for making ſearches of this kind.

Innovates of tallies loſt.

Divers entries of innovates of tallies loſt 10 *Rich.* the 2*d. Hil.* 14 *Edw.* 4. *Jac.* 1. and many in *Eaſter* 21 *Hen.* 6.

All recognizances taken in court.

All recognizances taken in court were uſed to be entred upon the roll in antient times, and there are many of them to be met with in *Eaſter* 21 *Hen.* 6.

Inhibitions concerning the Queen's Gold.

Divers inhibitions to ſheriffs not to depart the court before they have ſatisfied the queen her duty called the Queen Gold. *Mich.* 47 *Edw.* 3.

King's letters patents of fines to the queen.

The king's letters patent *direct' Thes' Seneſcallis terrarum & auditoribus reginæ ad re et fines illorum qui cum regina finem facere voluer' de aliqua cauſa.* 20 *Edw.* 3.

The queen's letters patents for the ſame.

The queen's letters patents *eiſdem officiarijs eadem de cauſa eodem rot'lo.*

Commiſſioners de qorum nomina of amerciaments to the queen.

Comiſſ. de quorum nomina pro levatione diverſorum debitorum de finibus & amerc' Regine conceſs'

infra

infra libertates ſuas & alibi pro regina, eodem rot'lo.

Tho. de Marſhton unus ex'tor W. de C. ven' coram baronibus 3 die Decembr' hoc anno & detulit hic teſtament' pred'ci W. quod barones irrot'lari preceperunt in hec verba, &c. Wills.

The deed intended to be inrolled is carried to a baron (if a bargain and ſale, one of the parties muſt attend and acknowledge it but) if the deed only requires a baron's fiat, then the party need not attend, for the fiat is granted of courſe by the baron, and is (as well as the acknowledgment) the clerk in court's warrant for inrolling the deed, the acknowledgment or fiat is wrote on the margin of the deed generally by the baron's clerk, and the form of the acknowledgment is as follows;

" The execution of this deed was acknow-
" ledged (in court) by *A. B.* (the party ac-
" knowledging) party thereto the
" day of 1769, before *T. Parker.*"

The form of the fiat is,

" Let this deed be inrolled in the office
" of Pleas of his majeſty's court of exche-
" quer at *Weſtminſter*, dated this
" day of 1769, *T. Parker.*'

The deed hereupon is inrolled by the clerk in court, for which he charges as follows,

	s.	*d.*
Acknowledging in court ——	1	0
Before a baron at his chamber —	5	0
For a baron's fiat —— ——	2	6
To the maſter and clerk in court for inrolling each ſheet, out of which is allowed to the ſolicitor 2 *d. per* ſheet.	0	8

The

The ſolicitor's fees and attendances are allowed, as charged in the court of chancery, for their trouble, beſides what is given them out of the clerk in court's fees as above.

Of informations.

Informations by the penal ſtatutes in king Charles's time, and ſince.

While Mr. *Noy* was attorney general, informations on the penal ſtatutes were proſecuted in the office of pleas, and in the reign of king *Charles* the firſt, many informations may be found on the files of bills ſubſcribed by Mr. *Noy* with the pleading thereupon, and it will appear on the files of writs, and books of orders of thoſe times that trials and judgments were had and obtained in the ſaid office on ſuch informations againſt victuallers, brewers, vintners, and for amendments of highways, and divers other matters. 8 *Car.* 1.

And diſtringas thereon,

Informations for the amendments of highways continued long after Mr. *Noy*'s time, and *diſtringas* were uſed to be ſued forth from term to term by order, and allowance of the court, and the ſheriff, after he had returned what highways were amended, was uſed to have a conſtat, and ceſſation of eſtreatments of iſſues *quouſque*, *&c.* but proceſs went on ſtill.

and conſtats.

In conformity to the practice of the office in the earlieſt times.

But informations were not firſt introduced into the office of pleas, in thoſe unprecedented times they ſeem to have been ingrafted in the original inſtitution of the office, and appear upon the earlieſt records there.

Againſt a hundred to contribute with the reſt of the county for amerciaments.

Hil. 8 *Edw.* 1. An information, and judgment againſt the hundred of *Andover* that they ſhould contribute with the county for all amerciaments coming upon the county, whereas they

they pretended to be diſcharged by their charters of antient demeſne.

25 *Edw.* 3. *Devon, ſs.* An information was brought by the farmer of the cuſtoms and *Subſidies* againſt R. B. for tranſporting goods not cocketted nor cuſtomed, and the defendant diſcharged by verdict and judgment. By a farmer of cuſtoms for tranſporting goods not cocketted.

An information was brought the ſame year by the ſheriff of *Eſſex* againſt his bailiff for receiving divers iſſues and profits to the uſe of the king under the ſheriff, and for not anſwering the ſame to the ſheriff, the defendant confeſſed 50*l.* received, and judgment *quod Rex recuperet, &c.* The ſheriff againſt his bailiff for iſſues, &c. not accounted for.

29 *Edw.* 3. An information on a penal ſtatute againſt the collectors of the tenths and fifteenths, as to all the hundreds, and vills chargeable therewith in the county of *Berks.* Againſt the collectors of the tenths and fifteenths.

11 *Rich.* 2. An information for the king, That *William Taylor* was outlawed at the ſuit of *Jo. Skynner* in a plea of debt, by which all the goods and chattels of the ſaid *William* were forfeited to the king, and that *Robert Marreſcall* was bound with two others to *William*, by a writing obligatory in 200*l.* and that the body of the ſaid *Robert* and the ſaid writing obligatory was in the cuſtody of the ſheriffs of *London*, whereupon the ſheriffs were commanded that they have as well the body as the ſaid writing obligatory on ſuch a day, *&c. cur' liberand' vic' 2 bre' & corp'*, *&c.* defendant pleads *non eſt factum*, and upon the trial, the defendant obtained a verdict, and judgment that the writing obligatory ſhould be cancelled. Information for the king concerning goods upon an outlawry.

Information upon a penal ſtatute in *Kent*, brought by *John Bray* againſt *Bennet.* 15 *Hen.* 5. On a penal ſtatute.

Agard

The like,

Agard againſt *Candſh*, *Savile's Rep.* 134. *Tempore.* 36 *Eliz.* Information upon the ſtatute of 8 *Edw.* 4. *cap.* 2. for 50 *l.* for giving and wearing of liveries; and upon the general iſſue it was found for the queen. *Tanfield* moved, that this action lay not in this court by the expreſs words of the ſtatute, which gave this action in the common pleas and king's bench,—Before the juſtices of peace, or juſtices of *Oyer*, but not a word of the exchequer. But he ſaid that in truth in a caſe where an action might well be brought at common law before, and the ſtatute gives a new remedy by a new action, there the old remedy at common law is not taken away. But in this caſe there was not any ſuch action at common law, by which if it be not given by the ſtatute to this court, it ſhall not lie here. As upon the ſtatute of 5 *Eliz.* againſt forgery, indictment was firſt brought before the juſtices of the peace at the quarter ſeſſions, and removed into the king's bench, and there adjudged void. Again the ſtatute of 5 *Eliz.* gave power to the juſtices of *Oyer* and *Terminer* and aſſize; but when it ſpeaks not of juſtices of the peace, there it was void if brought by them.—The attorney-general and *Atkins contra*; becauſe the ſtatute is not in the negative, this court hath jurisdiction; becauſe the queen is a party, this court hath jurisdiction; as the ſtatute of *Magna Charta* ſays, *quod communia placita non ſequantur curiam noſtram ſed ſint in aliquo loco certo:* Again the king ſhall have *quare impedit* in the king's bench, and 21 *Hen.* 3. the king brought *warrantia chartæ* in the king's bench, for thoſe general words do not bind the king; and becauſe there are no negative words: and as to the cauſe of indictment of forgery taken by juſtices of the peace,

peace, that is true, for the juſtices of the peace are not to meddle, except only of ſuch things of which the ſtatutes give them power, for they have all their power by the ſtatutes, by which they cannot intermeddle with *non-reſidents* or *witchcraft*; and the barons were of opinion that the action well lay in this court, for the reaſons before mentioned, to wit, becauſe for the queen; and becauſe there is no reſtraint; and becauſe it is a court not like to the ſeſſions of the peace; and becauſe they ſaid that in truth, inferiour courts take no authority by ſtatute, unleſs they are ſpecially named, but a ſuperiour court hath good authority though they be not ſpecially named, if not prohibited or reſtrained by negative words; ſee this cauſe as reported by others in *page* 31 of this book.

inferiour courts take no authority by ſtatute, unleſs ſpecially named; a ſuperior court doth, unleſs reſtrained by negative words.

Theſe precedents are ſelected from the reſt only as a few inſtances, that ſuch were filed from the earlieſt times down to thoſe abovementioned.

The antient courſe of the exchequer hath been, that if in an information of intruſion into lands or tenements the defendant pleads Not guilty, he ſhall loſe the poſſeſſion; and it is ſaid that the reaſon of this courſe is, firſt, for that regularly the king's title appeareth of the record, and therefore the defendant may take knowledge thereof, and the rather for that in every information of intruſion it is ſpecified of whoſe poſſeſſion the lands, *&c.* were: but if the defendant plead Not guilty, the king's learned counſel cannot know the defendant's title to provide to anſwer the ſame, as the defendant may do to the king's title. 4 *Inſt.* 116. *Dyer* 7 *Eliz.* 238.

In informations of intruſion if the defendant pleads non cul. he ſhall loſe the poſſeſſion.

Of quo warranto's.

Quo waranto's in Noy's and Banks's times.

There were alſo in Mr. *Noy*'s time divers *quo warranto's* brought in the office of pleas againſt particular perſons and corporations for divers cauſes with pleadings, and judgments thereupon, and the ſame were alſo brought while Sir *John Banks* was attorney general, but they were diſcontinued afterwards.

Of ſuing the peace.

Securitas pacis *or of ſuing the peace and good abearing, and of the writ of* ſupplicavit.

Attachment de bene gerendo.

Among the files of bills of ancient times are many for ſuing the peace and good abearing, and on the files of writs are attachments *de bene gerendo*, particularly in *Richard* the third's time.

In 11 *Rich.* 2. *Bucks*, *ff. Securitas pacis* prayed by *Skynner* againſt *Chapman* and granted by the court.

In *Trin.* 36 *Hen.* 6. *Securitas pacis' d'ni Regis petita per pl'itum Bonde cl'icum Robti' Mildenhale cl'ici pl'torum hujus ſccij' de Rico' Hendler de London per breve ejuſdem d'ni Regis & per ipſum Ricum' hic invent'.*

Supplicavit.

In 7 *Edw.* 4. *Securitas pacis* ſued by *William Barrowe* againſt *Thomas Collen*, and a *ſupplicavit* granted whereupon the defendant put in bail, and afterwards the plaintiff releaſed the peace.

In *Mich.* 12 *Edw.* 4. *Mildenhale* the clerk of the pleas made oath before the barons *quod ipſe de vita ſua & mutilatione membrorum ſuorum per J. P. Et pet' attach. & ei conceditur & def. capt' eſt & committitur priſone de Fleet & poſtea inven' ſecuritat'.*

As

As the writ of *ſupplicavit* already mentioned has been the proceſs of this office for ages, although the writ of attachment ſeems to anſwer every purpoſe thereof, yet it may be proper to ſay a word of it, and in what caſes this writ was uſually granted.

The ſupplicavit was anciently granted on complaint and oath of the ſuitor, that he had been abuſed and ſtood in danger of his life.

It was granted upon complaint and oath of the party where any ſuitor of the court is abuſed, and ſtands in danger of life from another ſuitor. The contemner is taken into cuſtody, and muſt give bail to the ſheriff, and if he moves to diſcharge the writ, the court hears both parties on affidavit, and continues it or not; as the caſe appears.

If they order the contemner to give ſecurity for his good behaviour (for this writ is in the nature of a warrant to apprehend a man for breach of the peace) he muſt do it by recognizance, and is to find ſureties for his good behaviour. If he beats or aſſaults the party a ſecond time, the court will order the recogniſance to be put in ſuit, and permit the party to recover the penalty; for the recogniſance is never to be ſued but by leave of the court.

Was in the nature of a warrant to apprehend a man for breach of the peace, and required a ſecurity for good behaviour, recogniſance not to be ſued but by leave of the court.

In a *ſupplicavit* of the peace the ſheriff may make his precept to take the body.

It is a judicial power given to the ſheriff by the writ of *ſupplicavit* which cannot be aſſigned over, and therefore when the bailiff has taken the body he ſhall not take ſurety, but the ſheriff himſelf ſhall do it. A judge's power cannot be given over. *Br. Office* and *Off' pl.* 39 *cites* 9 *E.* 4. 31.

The ſheriff on the ſupplicavit makes his precept to take the body, but the bailiff cannot take the ſecurity, the ſheriff only in this caſe can do it.

Of the writ ex parte talis.

The barons of the exchequer are the ſovereign auditors of *England*, ſays Sir *Edward Coke*, 4 *Inſt.* 115. For if a man aſſign auditors to a bailiff or receiver to account, and the auditors will not allow juſt and reaſonable allowances, but commit the bailiff or receiver to priſon, ſuch priſoner may have an original writ of *ex parte talis*, returnable before the treaſurer and barons of the exchequer, *&c.* for his relief in that behalf. *Fleta lib.* 6. *cap.* 64. 2 *Edw.* 3. 12. 14 *Edw.* 3. *Account* 74. 8 *Edw.* 4. 16 *f.* N. B. 129. *f. Regiſt'* 137.

Breve de ex parte talis inter Strange quer' & Wrench def. unde judicium verſus quer' pro arrerag' quibus ſolut' def. deliberatur extra priſonam. Mich. 6 *Hen.* 4.

Breve de ex parte talis cum recogn' ſuperinde & exit' & judicium ſuperinde. 30 *Edw.* 3.

Of commiſſions de quorum nomina, *or writs of aſſiſtance.*

Commiſſions de quorum nomina, how iſſued, and on what account.

By the manuſcript account of the proceedings in the office of pleas in 1644. It appears that it was then the duty of the attornies there to ſue forth the commiſſions *de quorum nomina* or writs of aſſiſtance for the ſheriff to levy ſuch of the king's debts as he had paid in account to the king, and by *Ball*'s manuſcript it appears that the ſheriff or his deputy, (who deſired a commiſſion in this caſe) brought his ſchedules ready ingroſſed on parchment; and at the foot

of the laſt ſchedule, if there were ſpace enough, or on a piece of parchment annexed, an oath was made before a baron, and a warrant for awarding the commiſſion in the following form.

Primo die Junij anno primo Regis nunc Caroli.

For as much as *T. M.* gent. late under-ſheriff unto *T. C.* Eſq; late high-ſheriff of the county of *N.* hath made oath before me that the ſums of money in theſe three ſchedules mentioned were charged in the account of the ſaid late ſheriff, and upon his account by him paid, and that he hath not levied nor received them nor any of them. *Jo. fiat commiſſio ad levand. & colligend. omnia & omnimod' debit' & denar' ſummas in hijs ſchedulis mentionat' A. B. C. D. commiſſ.* (and ſo name the commiſſioners) *direct'.*

The courſe then held was that the ſheriff brought the ſchedules examined under the hands of the clerks of the eſtreats to the office of pleas, and then one of the attornies in that office made out the commiſſion *ex officio* without the baron's warrant (as had been the ancient uſage) for which was paid

To the attorney in the office of pleas for ingroſſing the commiſſion and his fee.	6*s.* 8*d.*
To the clerk.	1*s.*
To the clerk of the pleas.	4*s.* 4*d.*
To the ſealer.	2*s.* 4*d.*

Writs of *diſtringas* were iſſued againſt the debtors in the nature of commiſſions *de quorum nomina.*

Many of theſe commiſſions may be found on the rolls of 21 *Hen.* 6. and a whole year was then allowed for a return of the commiſſion.

The king's collectors, and other accountants were much perplexed in paſſing their accounts by new extorted fees, and forced to procure this writ in this reign for the allowing and ſuing out their *Quietus* at their own charge, without the allowance of the king. *Chron. Angl.* See more hereof under the title of *Diſtringas* which were anciently uſed in the nature of commiſſions *de quorum nomina*, or comiſſions for levying debts or writs of aſſiſtance, which are the ſame by different denominations; all which were the peculiar buſineſs of this office from the earlieſt account of times, and which may be ſeen in the appendix.

Of commiſſions for examining witneſſes upon contempts.

Commiſſion for examining witneſſes upon contempts.

In thoſe times were alſo commiſſions granted out of the office (on affidavit being made as to facts) for the examination of witneſſes touching all ſorts of contempts, whereupon the antient writ of attachment iſſued for ſuch contempt; but later ages have acted more tenderly in this matter, and inſtead of the commiſſion (which was uſed to be obtained almoſt of courſe) a rule of court was obtained upon affidavit of facts for the party complained of to ſhew cauſe againſt the matters contained in thoſe affidavits, by which ſuch perſon had an opportunity of ſelf-defence, and the motion was confirmed or diſcharged as the merits appeared, and ſo it continues to be the practice at this day, and ever after the rule is made abſolute, and the party is attached, he may perſonally

perſonally be examined upon interrogatories, that the juſtice of his caſe may be better known, and the lenity of the court be ſhewn where it will admit of it.

Of conſtats.

In the reigns of *Henry* the ſixth, and *Edward* the fourth, many writs of *conſtat* which in ſome entries are called writs of *fieri facias* are inrolled, whereof many were iſſued in execution of judgment obtained upon informations.

Conſtats obtained upon informations.

Of the writ of ſcire facias.

Writs of *ſcire facias* appear to have been the common proceſs of the office of pleas from the earlieſt times down to the lateſt of the *Repertoriums*, and as there appears no reaſon why they have not in later times, and why they might not ſtill be in uſe, they have already been taken notice of, and will be further taken notice of in the appendix for the uſe of ſuch as may think them worthy of obſervation.

ſcire facias in the nature of common proceſs.

The entries of *tallia innovata* were innumerable in this office, and will be referred to in the appendix.

Tallies innovate.

Of the fine impoſed upon a capias pro fine.

Upon every action of treſpaſs *quare vi & armis*, wherein the plaintiff recovered the judgment, the entry is *qd. defend. capiatur*, and upon this judgment a *capias pro fine* was uſed to go forth, and if the defendant was taken thereupon, he was to pay his fine to be taxed by the court.

Of capias pro fine.

The forms of entring theſe fines may be found in *Hil.* 9 *Car.* as follows,

De termino ſci' Hilar' anno nono Car. Rs. Monmouth, ſſ. Finis Oweni Griffith ads Jacobi Price mil' de pli'to tranſgr' & ejectionis firme fact' apud M. in paroch' de T. in com' pred'co unde convict' eſt et unde cap's pro fine exibit' ret' octab' ſci' Mich'is hoc termino taxatur ad } 2 *s.* 6 *d.*

This was entred on the roll at the foot of the judgment.

The old form of entry of a compoſition upon a *capias pro fine* upon record was as follows,

In rotl' 47. in item linc in hemlinc finis 10 s.

De termino ſci' Michis' anno 480. *Edw.* 3*tii I. H. de &c. ven' coram Baron' hujus ſccij* 12. *die Octobr' hoc termino & fecit finem cum Rege pro ſe pro quodam contemptu per ipſum fact' annotat' in rot'lo pl'itorum de termino Paſche anno* 46 *Regis nunc.*

Cap's pro fine awarded againſt *Richard Joyner vic' London*, the defendant pleads a pardon, the king's attorney being demanded *nichil dicit &c.* ſo the defendant diſcharged *rot'lo ult' de anno* 7 *Edw.* 4.

Cap's pro fine pro tranſgreſſion' & contempt' tempore ulterius Regis. 10 *Hen.* 7.

Cap's pro fine ſuper deductionem facti. 10 *Hen.* 7.

Of the writ of liberate.

Of the liberate.

By *Madox cap.* 10 *ſect.* 13. According to the uſage of the elder times it ſeemeth that the king's treaſure was to be iſſued by virtue of a writ or mandate from the king; ſuch writ or mandate was uſually under the great ſeal or the privy ſeal, and was ſometimes directed to the chief juſticier and barons of the exchequer, but moſt commonly to the treaſurer

ſurer and chamberlains of the receipt, and the writ or mandate was founded upon a bill or certificate from the exchequer, or from the wardrobe, or upon ſome other matter of record; but the writ moſt generally uſed for iſſuing the king's money out of his exchequer was the liberate directed to the treaſurer and chamberlains. It was ſo called from the emphatical word *liberate* (deliver ye) uſed in it. This writ was of two ſorts, one a *liberate* for paying a ſum *hac vice* only, the other a *liberate* current or dormant for paying in continuance or oftner than once; he ſets forth many inſtances of them, but being little acquainted with the plea-ſide of the exchequer takes no notice of the writ of *liberate* ſtill uſed there.

Cap. 20. The day of the *liberate* was counted the time of the riſing of the exchequer. The king commands the treaſurer's lieutenant, the barons and chamberlains, to certify him in what ſtate things would be, at the receipt of the exchequer, after their *liberate* now at their (next) riſing. *Hil. Brevia 5 Er. Rol.* 30. *b.* in *June.*

When the power of the juſticiar was broken, the king (*Edward* the 1ſt.) reſerved to himſelf the power of iſſuing his own treaſure: for that being a matter of grace and benevolence, and not of juſtice and rigour, it was a proper policy in our great king *Edward* the firſt, to reſerve that power wholly to himſelf; and therefore none of the king's treaſure paid into the exchequer could iſſue without a *liberate*, which was a writ under the great ſeal or privy ſeal for iſſuing ſuch ſum of money; and as the king on the criminal ſide reſerved to himſelf the power of pardoning capital offenders, but committed to the judges the ſeverity of

the

the law, that he might have the grace of his own mercy; ſo it was committed to the judges of the exchequer to get in the money, but the iſſuing of it was in the mere power of the crown alone. *Gilbert* on the exchequer 135.

Money was never iſſued but by the great or privy ſeal, and antiently there were writs of liberate for the payment of money on any debts due from the crown, or on any grants made of any ſums; but afterwards they were wont to grant patents or privy ſeals to the treaſurer, giving him authority to iſſue warrants for the money. The writs were antiently directed to the treaſurer and chancellor, and therefore the warrants are at preſent ſigned by the treaſurer and chancellor, and mention the authority of the broad ſeal by which they iſſue. Theſe are entred and recorded by the auditor, and he draws his bill upon the teller; then theſe are entred in the office of pells, on the *pellis exitus*, and go from thence to the teller where the money is paid. *Gilbert* 139.

This writ of liberate ſtill continues to iſſue out of the office of pleas, three times a year for the neceſſaries of the court, from ſeal day to ſeal day, which are three, and are appointed by the curſitor baron after every term in the year, except after *Eaſter* term.—It is directed to the treaſurer, and chamberlains of the exchequer to pay to the chief uſher the fees for the ſummons of the pipe, the carriage or poſtage of writs, the green wax, the great ſeals, and the bill of neceſſaries, which bill of neceſſaries is made by the uſher of the exchequer, and preſented to the lord treaſurer, and chancellor, and ſubſcribed, and allowed by one or both of them, and then brought back to be examined by the baron, and ſo to be put in the writ of liberate.

The

The firſt attorney in the office of pleas, as ſecondary, as appears by *Ball*'s manuſcript, was uſed to make out this writ, and proceed in filling up the blanks, and doing what further was neceſſary. But for many years paſt it has been the peculiar of the junior attorney; as to which no account can be traced whence it became the peculiar of either of them.

The antient cuſtom hath been, that upon every ſealing day after the end of each term, *viz.* of *Michaelmas*, *Hilary* and *Trinity*, one of the abovementioned attorneys in the office of pleas, attended the general ſeal with the writs of liberate ready to be filled up, and perfected in court.

And firſt the attorney muſt take along with him, a piece of parchment made in the form of a bail piece, wherein he muſt write in great text the following particulars in the form here ſet down for *Hil.* vacation.

Sumonica, 123	—	63 *s. obdiq.*
Br'ia portanda,	—	6 *l.* 3 *s.* 6 *d.*
Cera, 21,321	—	41 *l.* 0 *s.* 4 *d.*
Magna ſigillat', 64	—	21 *s.* 4 *d.*
Neceſſaria,	—	176 *l.* 15 *s.* 2 *d.*
Summa,		

The endorſement upon the parchment.

Br'ia portanda,	—	1 *l.* 18 *s.* 9 *d.*
Duplicantur,	—	4 *l.* 4 *s.* 9 *d.*
Summa,		

No liberate is made out in *Eaſter* term, and no ſummons goeth out in *Michaelmas* term.

When

When the parchment is perfected, then the liberate is filled up in court with the number and ſums as in the parchment.

There muſt be duplicates of the writ of liberate, whereof one he muſt deliver to the curſitor baron who preſides in court on the ſeal days. The baron carries it unſealed to the receipt office, where the clerks attend his coming and receive it from him.

The other duplicate of the writ the attorney delivers to the marſhal of the court unſealed, who hath a file of them of very antient uſage, but the reaſon for it does not appear.

At the time the attorney delivers the writ to the curſitor baron, they examine the ſame with the parchment, and the attorney receives from the curſitor baron, the bill of neceſſaries ſubſcribed with the treaſurers or chancellor's name, which it is the duty of the attorney to file, together with the parchment abovementioned on the file of bills in the office of pleas of the term preceding the day on which the writ of liberate *bore teſte*, and note the writ muſt be teſted on the ſeal day.

The form of the writ will be found in the appendix.

The attorney receives for his trouble each ſeal day, a bag, ſix quires of paper, a ſtick of ſealing-wax, and a box of wafers, and at *Chriſtmas* an almanack, and three pieces of parchment are brought to him from the uſher of the court, with notice of the time when the ſeal days are appointed, which the curſitor baron fixes ſoon after the term is ended.

A LIST

A LIST of the FEES due to the Clerk of the *Pleas* and the four Attornies.

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
FOR the writ of *quo minus*	0	2	0	0	1	6
For the *al's* and *pluries* each	0	0	6	0	1	6
For the *venire facias ad reſpondend.* —— ——	0	2	0	0	1	6
For the *diſtringas ad reſpondend.* —— ——	0	1	0	0	2	6
For the *ſubpœna ad reſpondendum* —— ——	0	0	0	0	3	0
For the attachment and other proceſs of contempt —	0	0	0	0	3	0
Fee on the proclamation of rebellion — —	0	0	0	0	6	8
Fee on the commiſſion of rebellion — —	0	0	0	0	6	8
Fee upon every other proceſs before appearance —	0	0	0	0	3	4
For a *ſubpœna* for coſts	0	2	0	0	1	0
For an attachment for coſts	0	1	0	0	2	0
For a common writ of *ſcire facias* — —	0	4	0	0	1	0
For each *Habeas corpus* except *ſuper cepi* — —	0	2	0	0	2	0
For each *Habeas corpus ſuper cepi* — —	0	1	0	0	2	0
For a *procedendo* —	0	2	0	0	2	0
For ſigning the *fiat* for the *procedendo* — —	0	2	0	0	0	0

For

	Clerk of pleas. £.	S.	D.	Attorney. £.	S.	D.
For a *ſuperſedeas* —	0	2	0	0	2	0
For entring every ſuggeſtion on the roll, each roll —	0	6	8	0	0	0
For a prohibition —	0	2	0	0	0	0
For a conſultation — —	0	2	0	0	0	0
For drawing the writ of prohibition or conſultation each ſheet — —	0	0	0	0	1	0
For ingroſſing the ſame each ſheet — —	0	0	0	0	0	6
For every appearance entred in the paper book if no more than one defendant —	0	0	4	0	3	4
For every other defendant after the firſt — —	0	0	0	0	0	6
For recording every appearance on the roll upon a *cepi corpus* — —	0	2	0	0	0	0
For taking bail or recognizance to the ſecondary —	0	0	0	0	0	8
For filing each bail or recognizance — —	0	0	0	0	1	0
For entring them —	0	4	0	0	0	0
For inrolling each recogniſance with condition —	0	4	0	0	0	0
For inrolling each recogniſance without condition —	0	2	0	0	0	0
For the commitment of every priſoner in court —	0	2	0	0	0	0
For drawing all bills or declarations and pleadings in ordinary caſes and ſpecial verdict at bar, each ſheet —	0	0	0	0	0	8
For drawing all bills or declarations in actions *qui tam* and prohibitions — —	0	0	0	0	1	0

For

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
For ingroſſing all bills or declarations and pleadings each ſheet — —	0	0	0	0	0	6
For copying them each ſheet — —	0	0	0	0	0	4
For copying all bills or declarations and pleadings in actions popular each ſheet —	0	0	0	0	0	8
For entring every bill or declaration, plea, replication, rejoinder, and other ſubſequent pleadings under half a roll containing 10 ſheets, each ſheet 72 words — —	0	2	0	0	0	0
For the like entry if half a roll — —	0	3	4	0	0	0
For the like entry if more than half a roll, or if a whole roll	0	6	8	0	0	0
For the like entry every additional half roll —	0	3	4	0	0	0
For every continuance or common *imparlance* —	0	0	6	0	0	0
For every ſpecial imparlance	0	1	0	0	0	0
For poundage of monies taken out of court, *per* pound	0	0	3	0	0	0
For entring a diſcontinuance or reſtraint — —	0	2	0	0	0	0
For entring a *nonpros*, *nil dicit*, *non ſum informatus* or confeſſion — —	0	3	0	0	0	0
For entring judgment thereon and on a *ſcire facias* —	0	2	0	0	0	0
For entring each ordinary rule in the books of appearance or of orders — —	0	0	4	0	0	4

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
For entring every *defecit de recordo* or *relicta verificatione*	0	2	0	0	0	0
For entring every judgment thereon — —	0	2	0	0	0	0
For every warrant of attorney — —	0	0	4	0	0	4
For entring a *jurata* —	0	1	0	0	0	0
For entring every iſſue after imparlance — —	0	2	0	0	0	0
For a *venire facias* for a jury	0	0	6	0	1	6
For a *diſtringas ad jur'*	0	0	6	0	2	0
For a commiſſion to the juſtices of aſſize — —	0	3	4	0	3	4
For a renewed commiſſion	0	1	8	0	1	8
For a *mittimus* into a county palatine — —	0	2	0	0	2	0
For a *ſubpœna ad teſtificand.*	0	1	0	0	1	0
For ingroſſing the record of *niſi prius* each ſheet —	0	0	0	0	0	6
For ſigning each record of *niſi prius* — —	0	3	4	0	0	0
For ſigning a renewed record — —	0	1	8	0	0	0
For a writ of inquiry of damages — —	0	2	0	0	0	0
For ingroſſing a writ of inquiry each ſheet —	0	0	0	0	0	6
For entring a *poſtea* and inquiſition — —	0	2	0	0	0	0
For entring every judgment thereon — —	0	2	0	0	0	0
For filing each *poſtea* and inquiſition — —	0	0	0	0	1	0
For docquetting each judgment — —	0	4	0	0	0	0

For

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
For drawing a bill of coſts	0	0	0	0	1	0
For taxing it, and attending the taxation — —	0	2	0	0	3	4
For a writ of execution —	0	0	6	0	1	6
For a writ of *venditioni exponas* or *certiorari* — —	0	2	0	0	2	0
For entring a *certiorari* out of chancery to certify a record	0	3	4	0	3	4
For certifying the record, each roll — —	0	6	8	0	0	0
For a writ of reſtitution —	0	0	6	0	1	6
For entring an *audita querela* — —	0	6	8	0	3	4
For entring a compoſition upon a *capias pro fine* —	0	2	0	0	0	0
For inrolling ſpecial verdict, each ſheet — —	0	0	0	0	0	4
For entring them, each roll	0	6	8	0	0	0
For allowing a writ of error	0	0	0	0	0	0
For the entry of every error aſſigned upon the writ of error	0	2	0	0	0	0
For drawing the proceedings upon a writ of error, each ſheet	0	0	0	0	0	8
For entring them, each ſheet	0	0	0	0	0	4
For inrolling them —	0	6	8	0	6	8
For entring every rule in error — —	0	1	6	0	0	0
For certifying a record upon a writ of error, each roll —	0	6	8	0	0	0
For ingroſſing a record upon a writ of error, each ſheet —	0	0	0	0	0	6
For a tranſcript of a record upon a writ of error in parliament, each ſheet —	0	0	0	0	0	6

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
For carrying up the tranſcript to the *Houſe* of *Lords*	1	1	0	0	0	0
For drawing and entring every order of court, each ſheet	0	0	8	0	0	0
For all copies of affidavits, judgments, and other records, each ſheet — —	0	0	0	0	0	8
For filing every proceſs not excepted by act of parliament	0	0	0	0	1	0
For ſtriking a ſpecial jury —	2	2	0	0	0	0
For entring every challenge	0	2	0	0	0	0
For acknowledging every ſatisfaction upon record —	0	2	0	0	4	8
For every releaſe —	0	0	0	0	2	0
For certifying a memorial of a judgment ſigned to be regiſtred — —	0	1	0	0	0	0
For every affidavit taken by the clerk of the pleas —	0	1	0	0	0	0
For inrolling all deeds, each roll — —	0	6	8	0	6	8
For inrolling all writs, each roll — —	0	0	0	0	6	8
For attending motions in court, and upon every ſummons, and ſuch like —	0	0	0	0	3	4
For attending each trial and executing each inquiry of damages, aud upon writs of error	0	0	0	0	6	8
For attending each trial at bar — —	0	0	0	1	0	0
For every exhibit upon a trial at bar — —	0	0	0	0	1	0
For ſearching judgments, each term — —	0	0	0	0	0	4

For

	Clerk of Pleas. £.	S.	D.	Attorney. £.	S.	D.
For exemplifying a record containing half a roll or leſs	0	3	4	0	3	4
For every other half roll —	0	3	4	0	3	4
Term fee in ordinary caſes	0	0	0	0	3	4
Term fee on writs of error	0	0	0	0	6	8

A LIST of the Bagbearers FEES.

	S.	D.
For attending the court of exchequer with the roll on every trial at bar — —	5	0
For bringing down the roll to *Weſtminſter*, where any matter of law comes on before the barons where the ſuit is commenced in the office of pleas	1	0
For bringing down to *Weſtminſter* every file of bills or writs being out of the current or preceding terms to be made uſe of in the lawſide of the court of exchequer — — —	1	0
For attending the court of chancery, king's bench or common pleas with any file of bills or writs belonging to the ſaid office — —	5	0
For attending with any file of bills or writs in the exchequer-chamber, or at *Serjeants Inn*, when the court ſits on the *Equity* ſide of the ſaid court	5	0

An Ordinance made in the Reign of *Henry* the Sixth, to be Obſerved by the Officers and Clerks of the King's Exchequer for taking of FEES of the King's Accountants. *Londini Anno* 1544.

In Officio Clerici placitorum.

	S.	D.
Imprimis pro brevi originali ad ſectam alicujus computantis in Sccio. predicto proſecut. verſus aliquam perſonam — — —	2	0
Item pro brevi judiciali, &c.	6	0
Item pro intratione declarationis ſuperinde facta in rotulo. — — — —	2	0
Item pro intratione de nihil dicit fact' ſuper aliquo computante, &c. — — —	2	0
Item pro intratione judicij redditi, &c. —	2	0
Item pro brevi de conſtat ad ſectam aliecujus computantis — — —	2	0
Item pro commiſſione fact' pro aliquo computante quorum nomina — — —	3	4
Item pro irrotulatione ejuſdem commniſſionis —	1	0
Item pro brevi de fieri facias ſuper aliqua aſſignatione facta pro aliquo computante vel aliqua alia perſona per aliam aſſignationem ſive commiſſionem, &c. —	2	0
Sed ſi ſuper fieri facias per talliam —	0	6
Item pro brevi de fieri facias ſuper allocatione habita in eodem Sccio. &c. — — —	2	0
Item pro intratione placiti ſive reſponſ' pro aliquo computante — — —	2	0
Item pro intratione fact' in rotulo pro innovatione talliæ perdit' per aliquem computantem —	2	0
Item pro exemplificatione recordi habit' pro aliquo computante, &c. — — —	6	8

A PAR-

A

PARTICULAR

OF THE RECORDS

OF THE

OFFICE of PLEAS

As they are now depoſited in thirteen preſſes, in the back paſſage leading into the court of exchequer at *Weſtminſter*, beginning number one at the top, next the long-room belonging to the king's remembrancer's office.

N°. I. BILLS.		WRITS.	
Mic. Hil. Eaſt. Tri.	1 *Jam.*	Mic. —- Eaſt. Tri.	1 *Jam.*
Mic. Hil. Eaſt. Tri.	2 ——	Mic. —- Eaſt. Tri.	2 ——
Mic. Hil. Eaſt. Tri.	3 ——	Mic. Hil. Eaſt. Tri.	3 ——
—— Hil. ——	4 ——	————	4 ——
Mic. Hil. Eaſt. Tri.	5 ——	Mic. Hil. Eaſt. Tri.	5 ——
Mic. —— Eaſt. Tri.	6 ——	Mic. —- Eaſt. Tri.	6 ——
Mic. Hil. Eaſt. Tri.	7 ——	Mic. Hil. Eaſt. Tri.	7 ——
Mic. —— Eaſt Tri.	8 ——	Mic. Hil. Eaſt. Tri.	8 ——
———— Eaſt —	13 ——	————	13 ——
—— Hil. Eaſt. Tri.	14 ——	Mic. Hil. —- Tri.	14 ——
————	1657	———— Eaſt. —	1657
Mic. Hil. Eaſt. Tri.	1658	———— Eaſt. Tri.	1658
Mic. Hil. Eaſt. Tri.	1759	Mic. Hil. Eaſt. Tri.	1659

Nº. 2. BILLS.	WRITS.
Mic. Hil. Eaſt. Tri. 9 *Jam.*	Mic. Hil. Eaſt. Tri. 9 *Jam.*
Mic. Hil. Eaſt. Tri. 10 ——	Mic. Hil. Eaſt. Tri. 10 ——
Mic. Hil. Eaſt. Tri. 11 ——	Mic. Hil. Eaſt. Tri. 11 ——
Mic. Hil. Eaſt. Tri. 12 ——	Mic. Hil. Eaſt. Tri. 12 ——
Mic. Hil. Eaſt. Tri. 13 ——	Mic. Hil. Eaſt. Tri. 13 ——
Mic. Hil. Eaſt. —— 14 ——	Mic. Hil. Eaſt. Tri. 14 ——

Nº. 3. BILLS.	WRITS.
Mic. Hil. —— Tri. 15 *Jam.*	Mic. Hil. Eaſt. —— 15 *Jam.*
Mic. Hil. Eaſt. Tri. 16 ——	Mic. Hil. Eaſt. Tri. 16 ——
Mic. —— Faſt. Tri. 17 ——	Mic. Hil. Eaſt. Tri. 17 ——
Mic. Hil. Eaſt. Tri. 18 ——	Mic. Hil. Eaſt. Tri. 18 ——
Mic. Hil. Eaſt. Tri. 19 ——	Mic. Hil. Eaſt. Tri. 19 ——
Mic. Hil. Eaſt. Tri. 20 ——	Mic. Hil. Eaſt. Tri. 20 ——
Mic. Hil. Eaſt. Tri. 21 ——	Mic. Hil. Eaſt. Tri. 21 ——
Mic. Hil. Eaſt. Tri. 22 ——	Mic. Hil. Eaſt. Tri. 22 ——

Nº. 4. BILLS.	WRITS.
Mic. Hil. Eaſt. Tri. 1 *Car.*	—— Hil. Eaſt. Tri. 1 *Car.*
Mic. Hil. Eaſt. Tri. 2 —	Mic. Hil. Eaſt. Tri. 2 —
Mic. Hil. Eaſt. Tri. 3 —	Mic. Hil. Eaſt. Tri. 3 —
Mic. Hil. Eaſt. Tri. 4 —	Mic. Hil. Eaſt. Tri. 4 —
Mic. Hil. Eaſt. —— 5 —	Mic. Hil. Eaſt. Tri. 5 —
Mic. Hil. Eaſt. Tri. 6 —	Mic. Hil. Eaſt. Tri. 6 —
Mic. Hil. Eaſt. Tri. 7 —	Mic. Hil. Eaſt. Tri. 7 —
Mic. Hil. Eaſt. Tri. 8 —	Mic. Hil. Eaſt. Tri. 8 —
Mic. Hil. Eaſt. Tri. 9 —	Mic. Hil. Eaſt. Tri. 9 —
Mic. Hil. Eaſt. Tri. 13 —	——Hil. Eaſt. Tri. 13 —

Mic.

Mic. Hil. East. Tri. 14 —	Mic. Hil. East. Tri. 14 —
Mic. Hil. East. Tri. 18 —	Mic. Hil. East. Tri. 18 —
——— East. Tri. 19 —	——— Tri. 19 —
1643	1643
—— Anno ——— 20 —	—— Anno ——— 20 —
	East 1666
—— Anno ——— 21 —	—— Anno ——— 21 —
—— Anno ——— 22 —	—— Anno ——— 22 —
Mic. --- East. Tri. 23 —	Mic. Hil. East. Tri. 23 —
1647	1647
Mic. Hil. East. Tri. 24 —	Mic. Hil. East. Tri. 24 —
1648 1648	1648 1468
Mic. Hil. East. Tri. 1649	Mic. Hil. East. Tri. 1649
Mic. Hil. East. Tri. 1650	——— East. Tri. 1650

N°. 5. BILLS.	WRITS.
Mic. Hil. East. Trin. 10 *Car.*	Mic. Hil. --- Tri. 10 *Car.*
Mic. Hil. East. Tri. 11 —	Mic. Hil. East. Tri. 11 —
Mic. Hil. East. Tri. 12 —	Mic. Hil. East. Tri. 12 —
Mic. Hil. East. Tri. 15. —	Mic. Hil. East. Tri. 15 —
Mic. Hil. East. Tri. 16 —	Mic. Hil. East. Tri. 16 —
——— Tri. 17 —	Mic. Hil. East. Tri. 17 —
Mic. Hil. East. Tri. 1651	Mic. Hil. —— Tri. 1651
Mic. Hil. East. Tri. 1652	Mic. Hil. East. Tri. 1652
Mic. Hic. East. Tri. 1653	Mic. Hil. East. Tri. 1653
Mic. Hil. East. Tri. 1654	Mic. Hil. East. Tri. 1654
Mic. Hil. East. Tri. 1655	Mic. Hil. East. Tri. 1655
Mic. Hil. East. Tri. 1656	Mic. Hil. East. Tri. 1656
Mic. Hil. East. Tri. 1657	Mic. Hil. East. Tri. 1657

N°. 6. BILLS.	WRITS.
Mic. Hil. East. Tri. 12 *Eli.*	Mic. Hil. East. Tri. 12 *Eli.*

Mic. Hil. Eaſt. — 14 *Eli.*	Mic. Hil. Eaſt. Tri. 14 *Eil.*
Mic. Hil. Eaſt. Tri. 24 —	Mic. Hil. Eaſt. Tri. 24 —
Mic. Hil. Eaſt. Tri. 28 —	Mic. Hil. Eaſt. Tri. 28 —
Mic. Hil. Eaſt. Tri. 31 —	Mic. Hil. Eaſt. Tri. 31 —
Mic. Hil. Eaſt. Tri. 33 —	Mic. Hil. Eaſt. Tri. 33 —
Mic. Hil. Eaſt. Tri. 35 —	Mic. Hil. Eaſt. Tri. 35 —
Mic. Hil. Eaſt. Tri. 38 —	Mic. Hil. Eaſt. Tri. 38 —
Mic. Hil. Eaſt. Tri. 40 —	Mic. Hil. Eaſt. Tri. 40 —

Hereafter the bills and writs appear in the greateſt confuſion.

BILLS.	WRITS.
Looſe bills Hil. 8 *Jam.*	Looſe writs, - 14 *Jam.*
—— Eaſt. Tri. 7 *Edw.* 6.	Looſe writs, - 3 *Edw.* 6
—— Hil. —— 34 *Hen.* 8.	1 Queen *Mary*,
—— Tri. 9 *Eliz.*	Anno —— 13 *Eliz.*
	—— Tri. 22 *Hen.* 8.
	Mic. —— 5 *Edw.* 4.
	—— *Edw.* 4.
	—— 1 and 2 *Edw.* 4.
Bills and petitions 11 *Hen.* 6.	
Looſe bills about 2 *Ric.* 3.	
—— Trin. 2 *Edw.* 6.	—— 22 *Edw.* 3.
Mic. —— 1 *Edw.* 6.	

N°. 6. Bills continued.

— Hil. —— 6 *Edw.* 6.
——— Tri. 4 *Edw.* 6.
———————
Mic. ——— 3 *Hen.* 7.
——— 14 *Edw.* 4.
Mic. ——— 4 *Eliz.*
———————
———————
Bills & peti. Mic. 26 *Hen.* 6.
Mic. — 15 and 16 *Eliz.*
Tri. 3 *Edw.* 6.
Mic. 33 *Hen.* 6.
Mic. 15 *Edw.* 4.
———————
——— 1 *Hen.* 8.
———————

WRITS.

———————
———————
Looſe writs of—14 & 16 *Ja.*
———————
———————
———————
——— 22 *Hen.* 8.
——— 23 *Edw.* 3.

Tri. 16 *Eliz.*
Eaſt. 18 *Edw.* 4.
Mic. ——— 46 *Edw.* 3.
Mic. ——— 39 *Edw.* 3.
Mic. ——— 40 *Edw.* 3.
Eaſter ——— 36 *Edw.* 3.
———————

N°. 7. BILLS.

Mic. —— 38 and 39 *Eliz.*
Hil. ——— 42 *Eli.*
Hil.—2 and 3 *Ph.* & *M.*
Mic. ——— 22 *Hen.* 8.
Eaſter — 26 *Eliz.*
Mic. Hil. Eaſt. 4 & 5 *P.* & *M.*
Hil. 34 *Eliz.*
Mic. —— 12 and 13 *Eliz.*
Hil. ——— 41 *Eliz.*
Mic. —— 33 and 34 *Eliz.*
Mic. — 5 and 6 *Ph.* and *M.*

WRITS.

Hil. Tri. 1 and 2 *P.* and *M.*
Tri. 2 and 3 *P.* and *M.*

Mic. Hil. Tri. 26 *Eliz.*
Hil. — 4 & 5 *P.* & *M.*

Eaſt. 6 *Eliz.*
Eaſt. 41 *Eliz.*

N°. 7. Continued.

BILLS.	WRITS.
Hil. — 3 and 4 *P.* and *M.*	Mic. Hil. — 3 & 4 *P.* & *M.*
	Hil. Tri. 7 *Eliz.*
	Tri. 16 *Eliz.*
	{— 6 *Edw.* 6. / 1 *Phil.* and *Ma.*}
—— East. —— 10 *Hen.* 8.	—— 10 *Hen.* 8.
— East. — Tri. 37 *Hen.* 8.	Mic. Hil. East. Tri. 41 *Eli.*
	—— Hil. —— 37 *Hen.* 8.
	—— Hil. —— 20 *Hen.* 8.
	Mic. —— Tri. 16 *Hen.* 8.
	Mic. —— 26 *Hen.* 8.
—— Tri. 3 *Eliz.*	Mic. *pro Rege* — 3 *Hen.* 8.
—— East. — 31 *Hen.* 8.	— East. *pro Rege* 21 *Hen.* 7.
—— 20 *Hen.* 7.	—— Hil. —— 19 *Hen.* 7.
—— Tri. 31 *Hen.* 8.	—— East. — 37 *Hen.* 8.
Mic. —— 15 *Hen.* 8.	Mic. —— 15 *Hen.* 8.
—— Hil. —— 24 *Hen.* 8.	Mic. —— Tri. 24 *Hen.* 8.
East. — 4 and 5 *P.* and *M.*	—Hil. *pro Rege* — 5 *Hen.* 7.

N°. 7. Continued.

BILLS.	WRITS.
—— —— —— ——	—— East — 38 *Hen.* 8.
Tri. *Hen.* 8.	Mic. —— 32 *Hen.* 8.
Tri. 13 *Hen.* 8.	—— Tri. 13 *Hen.* 8.
East. 21 *Hen.* 8.	Mic. —— 21 *Hen.* 8.
East. 25 *Heu.* 8.	—— East. — 25 *Hen.* 8.
Tri. 13 *Hen.* 8.	—— East. — 11 *Eliz.*
Mic. —— 34 *Hen.* 8.	—— East. — 17 *Hen.* 7.
	Mic. — 3 and 4 *P* and *M.*
	Hil 9 *Hen.* 8.

Looſe writs in the reign of *Hen.* 8. No. 7.

N° 7. Continued.

BILLS.	WRITS.
—— East. —— 5 *Edw.* 6	Mich. —— 10 & 11 *Eliz.*
———————	Mich. —— Trin. 16 *Edw.* 4
Mich. —— 23 *Hen.* 8	—— East. —— 23 *Hen.* 8
Mich. —— 7 *Hen.* 8	—— East. —— 33 *Hen.* 8
—— Hil. —— 4 ——	Mich. —— —— 6 *Eliz.*
—— East. —— 19 *Hen.* 8	—— East. —— 15 *Hen.* 8
—— Hil. —— 10 *Hen.* 8	—— Hil. —— 24 *Hen.* 8
Mich. —— —— 20 *Eliz.*	—— East. —— 20 *Eliz.*
—— East. —— 38 *Hen.* 8	—— —— Trin. 28 *Hen.* 8
—— Trin. —— — *Hen.* 8	Mich. —— —— 33 *Hen.* 8
—— Trin. —— 21 *Hen.* 8	Mich. —— Trin. 21 *Hen.* 8
———————	—— East. —— 5 *Eliz.*
———————	—— Hil. —— 16 *Hen.* 8
—— Trin. —— 8 *Hen.* 8	—— East. —— 8 *Hen.* 8
—— Trin. —— 3 *Hen.* 8	—— —— Trin. 3 *Hen.* 8
—— Trin. —— 2 *Hen.* 8	—— —— Trin. 41 *Eliz.*
———————	Mich. —— — 35 *Hen.* 8
—— East. —— 30 *Hen.* 8	Mich. —— Trin. 30 *Hen.* 8
———————	Mich. —— — 29 *Hen.* 8
Mich. —— —— 37 *Hen.* 8	—— Hil. —— 37 *Hen.* 8
———————	—— East—2 & 3 P & M
—— Hil. —— 18 *Hen.* 8	—— —— Trin. 18 *Hen.* 8
———————	—— Hil. —— 27 *Hen.* 8
—— East. —— 31 *Hen.* 8	—— —— Trin. 31 *Hen.* 8
———————	—— — Trin. 17 *Hen.* 8
———————	—— — Mich. 26 *Hen.* 8

Mich. —— —— 36 *Hen.* 8	—— Hil. —— 17 *Hen.* 8
—— Hil. —— 26 *Hen.* 8	—— Hil. —— 12 *Hen.* 8
—— Hil. —— 15 *Hen.* 8	Mich. —— —— 18 *Hen.* 8
—— Hil. —— 7 *Hen.* 8	—— —— East. 6 *Hen.* 8
—— —— East. — 20 *Eliz.*	—— —— East. 34 *Hen.* 8
—— Hil. —— 21 *Hen.* 8	Mich. —— —— 38 *Hen.* 8

N°. 7. Continued.

BILLS.	WRITS.
——————— 6 *Hen.* 8	——Hil.— Trin. 19 *Hen.* 8
Mich.——————— 5 *Ed.* 6	———East. Trin. 14 *Hen.* 8
——————— Trin.— *Hen.* 8	Mich. pro rege —12 *Ed.* 4
Mich.——————— 3 *Hen.* 8	——Hil.— 1 & 2 P. & M.
	——Hil. — Trin. 1 *Hen.* 8
	——Hil. ———————4 *Hen.* 8
	———East.— 35 *Hen.* 8
	Mich.———————36 *Hen.* 8
	——East—Trin. 22 *Hen.* 8
	——East.——— 13 *Hen.* 8

——Hil.——— 15 *Eliz.*	
——Hil.——— 23 *Eliz.*	Mich. —— 22 & 23 *Eliz.*
Mich. ——— 3 & 4 *Eliz.*	Mich. —— 31 & 32 *Eliz.*
——Hil.——— 31 *Hen.* 8	——————— Trin. 4 *Hen.* 8
———East. — 3 *Hen.* 8	Mich.——————— 9 *Hen.* 8
——Hil.——— 33 *Hen.* 8	——— East.—— 1 *Hen.* 8
———Trin.— 17 *Hen.* 8	——— East.—— 20 *Hen.* 8
——Hil.——— 27 *Hen.* 8	——Hil.——— 28 *Hen.* 8
———East——— 6 *Ed* 6	——————East. — 15 *Ed.* 3
	——— East. —— 16 *Rich.* 2
	—— Writs all looſe———
	———Hil.———11 *Ed.* 4

Mich.— East—— 7 *Eliz.*	——————East——7 *Eliz.*
Mich. —— 12 & 13 *Eliz.*	——————East — 13 *Eliz.*
——Hil. ——— 19 *Eliz.*	———Hil. —— 36 *Eliz.*
——————— Trin. 21 *Eliz.*	——Hil. —Trin. 21 *Eliz.*
——Hil.— Trin. 29 *Eliz.*	——Hil. —Trin. 26 *Eliz.*
Mich.——East.—32 *Eliz.*	Mich. ——26 & 27 *Eliz.*
Mich.—— 40 & 41 *Eliz.*	———Hil. —— 29 *Eliz.*
Mich. Hil. East. 42 *Eliz.*	——————East.— 1 *Mary*

N°. 7. Continued.

BILLS.	WRITS.
	——— Hil. 1 & 2 *P.* & *M.*
	—— Trin. 2 & 3 *P.* & *M.*
	—— Eaſt.—3 & 4 *P.* & *M.*
	Mich.——— Trin. 42 *Eliz.*
	———Hil. ———36 *Eliz.*

One Remembrance Roll of Writs in *Elizabeth*'s Time.

Mich. ——— 10 *Hen.* 8	Mich. ——— 9 *Ed.* 4
Mich.——— 12 *Hen.* 8	———Eaſt.—— 17 *Ed.* 4
——Hil.——— 2 *Hen.* 8	——Hil.——— 19 *Ed.* 4
——— Trin. 7 *Hen.* 8	Mich.——— — 3 *Hen.* 8
Mich. Hil.——— 1 *Hen.* 8	Mich. — Eaſt. 4 *Hen.* 8
About Mich.——20 *Hen.* 8	—— ——— Eaſt 5 *Hen.* 8
—— Trin. 13 *Hen.* 8	——— Trin. 9 *Hen.* 8
	Mich.— Trin. 11 *Hen.* 8
	——— Trin. 15 *Hen.* 8
Mich.—Eaſt—— 18 *Hen.* 8	—— Hil. —— 18 *Hen.* 8
Mich. ——— 38 *Hen.* 8	—— Hil. —— 16 *Hen.* 8
—— —— ———	—— Hil. —— 26 *Hen.* 8
——Eaſt—— 27 *Hen.* 8	Mich. ——— 27 *Hen.* 8
Mich. ——— 31 *Hen.* 8	Mich. ——— 31 *Hen.* 8
——Hil. —— 32 *Hen.* 8	——— Eaſt. 22 *Hen.* 8
—— Trin. 34 *Hen.* 8	——— Eaſt 36 *Hen.* 8
—— Trin. 25 *Hen.* 8	Mich. ——— 25 *Hen.* 8
——Eaſt.—— 7 *Ed.* 6	——— — Trin. 27 *Eliz.*
No Term or Year *P.* & *M.*	
Mich. —— 4 & 5 *P.* & *M.*	

One Remembrance Roll of Writs.

N° 7. Continued.

BILLS.	WRITS.
——— Hil. ——— 9 *Hen.* 8	——— Hil. — 23 *Hen.* 7
Mich. ——— — 18 *Hen.* 8	——— Hil. — 2 *Hen.* 8
——— Hil. —— 20 *Hen.* 8	——— Eaſt. 30 *Hen.* 8
— — —Trin. 16 *Ed.* 4	Mich. ——— 25 *Hen.* 8
Mich. ——— 2 & 3 *Eliz.*	——— Eaſt — 6 *Hen.* 8
——— Hil. —— 36 *Hen.* 8	——— Hil. — 20 *Hen.* 8
	——— Hil. — 19 *Hen.* 8
	——— — Trin. 5 *Hen.* 8
	——— Eaſt. — 10 *Hen.* 8
	Mich. ——— — 26 *Eliz.*
	Mich. —— 30 & 31 *Eliz.*

—— —— Eaſt. 13 *Hen.* 8	——— Eaſt —— 35 *Ed.* 3
Mich. Eaſt. Trin. 32 *Hen.* 8	Mich. ——— — 4 *Hen.* 8
Mich. ——— 12 *Hen.* 8	Mich. ——— — 19 *Hen.* 8
——— Hil. — 2 *Ed.* 6	—— Hil. — 35 *Hen.* 8
Mich. ——— — 4 *Ed.* 6	—— Hil. Eaſt. —6 *Eliz.*
Mich. ——— 33 & 34 *Eliz.*	— — Hil. — 15 *Eliz.*
——— —Eaſt. 23 *Eliz.*	——— —Trin. 23 *Eliz.*
——— —Eaſt. 27 *Eliz.*	—— Hil. — 20 *Eliz.*
——— — Eaſt. 15 *Eliz.*	Mich. ——— 19 *Eliz.*
——— —Trin. 20 *Eliz.*	—— Hil. — 25 *Eliz.*
Mich. ——— — 23 *Eliz.*	—— Hil. — 11 *Eliz.*
—— Hil. ——— 32 *Eliz.*	—— Hil. — 27 *Eliz.*

— Eaſt — 33 *Hen.* 8	Mich. Hil. — 5 *Eliz.*
Mich. Hil. Eaſt. Trin. — } 11 *Eliz.*	—— Hil. — 7 *Eliz.*
	——— — Trin. 16 *Eliz.*
	——— Eaſt — 1 *Ed.* 4
	——— Eaſt. — 20 *Ed.* 4

N°. 7.

N°. 7. Continued.

BILLS.	WRITS.
	——— East. 3 *Ed.* 3
	——Hil. — 4 *Ed.* 3
	Mich. — — 25 *Ed.* 3
	——— Trin. 37 *Ed.* 3
	——Hil. — 44 *Ed.* 3
	—— — East. 16 *Ric.* 2

——2 Files Trin. 17 *Eliz.*	——East. & Trin. 17 *Eliz.*
—Hil. — — 41 *Eliz.*	——Hil. — 18 *Eliz.*
——East. — 3 *Ed.* 6	

9 Rolls of Remembrancers of Writs in Queen *Eliz.* a file of Writs and Bills of ſeveral Reigns huddled up together.

Mich. Hil. East. Trin. 8 *Eliz.* | Mich. Hil. East. Trin. 8 *Eliz.*

Mich. Hil. — 17 *Eliz.*	Mich. Hil. — 17 *Eliz.*
— — Trin. 41 *Eliz.*	Mich. East. ——— 41 *Eliz*
	quære East. 2 *Hen.* 8

—Hil. Trin. 10 *Eliz.* | Mich. Hil. East. Trin. 10 *Eliz.*

Mich. Hil. East. Trin. 36 *Eliz.* | Mich. East. Trin. 36 *Eliz.*

Mich. Hil. East. Trin. 22 *Eliz.* | Mich. Hil. East. Trin. 22 *Eliz.*

N°. 7. Continued.

BILLS.	WRITS.
——East— — 4 *Hen.* 6	——Hil. — 2 *Hen.* 8
—Hil. — — 3 *Ed.* 6	——Hil. — 5 *Hen.* 8
Mich.Hil.East.Trin.37*Eliz.*	Mich.Hil.East.Trin.37 *Eliz.*
—— East. 28 *Hen.* 8	——Hil. — — 2 *Hen.* 8
Mich. — — 25 *Hen.* 8	——— —— East.— 45*E.*3
—— East. 12 *Hen.* 8	——— Trin. 12 *Hen.* 8
Mich. — — 11 *Hen.* 8	Hil. —— 7 *Hen.* 8.
—— East. 34 *Hen.* 8	
— — Trin. 15 *Hen.* 8	
Imperfect East. 9 *Eliz.*	Mich. Hil. Trin. 9 *Eliz.*
Mich. — 8 & 9 *Eliz.*	
—— —— Trin. 32 *Eliz.*	——Hil. —— 13 *Eliz.*
Mich. —— 9 & 10 *Eliz.*	Mich.——East. — 21 *Eliz.*
——— East.—38 *Eliz.*	Mich.——East.—29 *Eliz.*
Mich. — East. — 29 *Eliz.*	——East. Trin. 34 *Eliz.*
—— ——Trin. 42 *Eliz.*	
——Hil. East.— 34 *Eliz.*	
Mich. Hil.—— 21 *Eliz.*	

Two Remembrance Rolls of Writs in *Eliz.*

Mich.Hil.East.Trin. 30*Eliz.* | Mich.Hil.East.Trin.30*Eliz.*

N° 7. Continued.

BILLS.	WRITS.
——East. —— 4 *Hen.* 7	—Hil. *pro Rege* } 10 *Hen.* 7
Mich. —— —— 11 *Hen.* 7	—Hil. }
	Mich. *pro Roge*
	—Hil. *pro Rege* } 17 *Hen.* 7
	—Hil. —— }
	—— East —— 20 *Hen.* 7
	Mich.—— —— 19 *Hen.* 7
	——Hil. —— 1 *Hen.* 8
—— —— Trin. 1 *Eliz.*	Mich. Hil. East. Trin. 4 *Eliz.*
——East. —— 4 *Eliz.*	
	——Hil. East. Trin. 2 *Eliz.*
	——Hil. East. Trin. 3 *Eliz.*
	—— East —— 4 & 5 *Ed.* 6
	—— East. Trin. 4 *Ed.* 6
	Mich. Hil. East. Trin. 2 *Ed.* 6
	Mich. Hil. East. — 3 *Ed.* 6
	Mich. —— Trin. 5 *Ed.* 6
	Mich. Hil. 38 } Trin. 1 *Ed.* 6
	H. 8 & 1 *Ed.* 6 }
——East. — 9 *Hen.* 8	——East —— 35 *Hen.* 8
Mich. —— —— 27 *Hen.* 8	—— Trin. 23 *Hen.* 8
Mich. —— —— 3 *Hen.* 8	—— Trin. 20 *Hen.* 8
Mich. —— —— 25 *Hen.* 8	Mich.——Trin. 8 *Hen.* 8
—— Trin. 27 *Hen.* 8	——Hil. —— 33 *Hen.* 8
—— Trin. 18 *Hen.* 8	——Hil. —— 22 *Hen.* 8
—— East. —— 11 *Hen.* 8	Mich.—— —— 7 *Hen.* 8

N°. 7. Continued.

BILLS.	WRITS.
—— Eaſt. —— 13 *Hen.* 8	——Hil. —— 7 *Hen.* 8
——Eaſt. Trin. 5 *Eliz.*	Writs looſe
—— Trin. 34 *Eliz.*	—— Eaſt —— 8 *Hen.* 8
——Hil. —— 27 *Eliz.*	Writs looſe
——Hil. —— 6 *Eliz.*	Mich. for the king } 6 *Hen.* 8
Mich. imperfect 13 *Car.* 1	Trin. —— }
——Hil. looſe 8 *James*	——Eaſt—— 23 *Eliz.*
	——Eaſt —— 15 *Eliz.*
	Mich. —— 26 & 27 *Eliz.*

——Hil.—— 4 *Ed.* 6.	—— — Trin. 27 *Hen.* 8
——Trin. 5 *Hen.* 7	——Faſt. —— 2 *Hen.* 8
Mich.—— —— 1 *Eliz.*	—— Hil. — 8 *Hen.* 8
——Eaſt. —— 17 *Eliz.*	——Hil.—— 25 *Hen.* 8
——Eaſt. —— 19 *Eliz.*	Mich —— 19 *Ric.* 2
	——Hil. —— 1 *Mary*
	Mich.—Eaſt. Trin. 1 *Eliz.*
	—— —— Eaſt. 9 *Eliz.*
	Mich. Hil. Eaſt. Trin. 19 *Eliz.*

——Hill —— 23 *Hen.* 8	——Hil. —— 23 *Hen.* 8
Mich. —— — 26 *Hen.* 8	—— Hil. Trin. 34 *Hen.* 8
—— Eaſt. —— 35 *Hen.* 8	——Eaſt.— 9 *Hen.* 8
—— — Trin. 9 *Hen.* 8	——Hil. —— 11 *Hen.* 8
—— — Trin. 22 *Hen.* 8	——Hil. —— 6 *Hen.* 8
——Hil. —— 29 *Hen.* 8	—— — Trin. 29 *Hen.* 8
——Hil. —— 24 *Hen.* 8	Mich. —— —— 14 *Hen.* 8
——Hil. —— 11 *Hen.* 8	Mich. —— —— 17 *Hen.* 8
Mich. —— —— 6 *Ed.* 6	—— —— Trin. 5 *Hen.* 8
Mich. —— —— 2 *Ed.* 6	—— Eaſt — 12 *Hen.* 8
——Eaſt.—— 5 *Hen.* 8	Mich. Eaſt. — 8 *Ed.* 4
Mich.—— Trin. 27 *Eliz.*	—Hil. imperfect 10 *Hen.* 7

N°. 7.

N°. 7. Continued.

BILLS.

——— —— Trin. 19 *Eliz.*
Mich. ——— 14 & 15 *Eliz.*
——Hil. — —— 6 *Hen.* 7
Mich. ——— —— 21 *Hen.* 8
——— Hil. —— 20 *Eliz.*
Mich. —— 15 & 16 *Eliz.*
——— East. —— 1 *Mary*
Mich. imperfect 9 *Jam.*
Mich. —— —— 10 *Car.*

WRITS.

—— — Trin. 20 *Eliz.*
Mich. — 15 & 16 *Eliz.*
—— Hil. — 10 *Eliz.*
— — Trin. 5 *Eliz.*
— — Trin. 6 *Eliz.*
——Hil. — 23 *Eliz.*
— — — Trin. 15 *Eliz.*
— — — Trin. 11 *Eliz.*
——Hil. — 6 *James*

Mich. — — 9 *Hen.* 8
Mich. — — 30 *Hen.* 8
——Hil. — 17 *Hen.* 8
—— — East. 2 *Hen.* 8
Mich. — — 1 *Mary*
— East. 3 & 4 *Ph.* & *M.*
Mich. — 2 & 3 *Ph.* & *M.*
——East. — 13 *Eliz.*
—— —Trin. 41 *Eliz.*
—— East. — 6 *Eliz.*
——Hil. — 16 *Eliz.*

— — East. 42 *Eliz.*
Hil. East. Trin. 32 *Eliz.*
—— — Trin. 29 *Eliz.*

N°. 8.

ROLLS.

Mich. Hil. East. Trin. 1 *Ja.* 4 Bundles
Mich. Hil. — — Trin. 2 *Ja.* 3
Mich. Hil. East. Trin. 3 *Ja.* 4
Mich. Hil. East. Trin. 4 *Ja.* 4

N°. 8. Continued.

ROLLS.

	Bundles.
Mi. Hil. Eaſt. Trin. 5. *Ja.*	4
Mi. Hil. Eaſt. Trin. 6. *Ja.*	4
Mi. Hil. Eaſt. Trin. 7 *Ja.*	4
Mi. Hil. Eaſt. Trin, 8 *Ja.*	4
Mi. Hil. Eaſt. Trin. 9 *Ja.*	4
Mi. Hil. Eaſt. Trin. 10 *Ja.*	4
Mi. Hil. Eaſt. Trin. 11 *Ja.*	4
Mi. Hil. Eaſt. Trin. 12 *Ja.*	4
Mi. Hil. Eaſt. Trin. 13 *Ja.*	4
Mi. Hil. Eaſt. Trin. 14 *Ja.*	4
Mi. Hil. Eaſt. Trin. 15 *Ja.*	4
Mi. Hil. Eaſt. Trin. 16 *Ja.*	4
Mi. Hil. Eaſt. Trin. 17 *Ja.*	4
Mi. Hil. Eaſt. Trin. 18 *Ja.*	4

71 Bundles of Rolls.

N°. 9.

Files of BILLS.

Mich.— — Trin. —	16 *Eliz.*
—— — ——	10 *Ja.*
—— —Eaſt. —	15 *Ja.*
——Hil. — —	23 *Car.*
—— — Eaſt. —	1658
— — —Eaſt. —	1659

N°. 9.

N°. 9. Continued.

Books of Bail.

From Mich. 9 *Ja.* to Eaſt. 12 *Ja.*
From Trin. 12 *Ja.* to Hil. 15 *Ja.*
From Eaſt. 16 *Ja.* to Hil. 19 *Ja.*
From Eaſt. 20 *Ja.* to Hil. 20 *Ja.*
} both Incluſive.

Books of Appearances.

From Mich. 28 & 29 *Eliz.* to Trin. 35 *Eliz.*
From Hil. 43 *Eliz.* to Mich. 6 *Ja.*
From Trin. 10 *Ja.* to Mich. 13 *Ja.*
From Hil. 13 *Ja.* to Mich. 17 *Ja.*
From Mich. 21 *Ja.* to Trin. 4 *Car.*
From Hil. 9 *Car.* to Hil. 14 *Car.*
From Eaſt. 14 *Car.* to Trin. 17 *Car.*
From Mich. 24 *Car.* 1648 to Mich. 1651
From Hil. 1651 to Trin. 1655.
From Mich 1655 to Trin. 1657.
From Mich. 1657 to Eaſt. 1659.
} both Incluſive.

Books of Orders.

From 3 *Edw.* 6 to 5 *Eliz.*
From Mich. 9 & 10 *Eliz.* to Trin. 17 *Eliz.*
From Trin. 17 *Eliz.* to Trin. 22 *Eliz.*
From Eaſt. 23 *Eliz.* to Mi. 26 & 27 *Eliz.*
From Hil. 27 *Eliz.* to Trin. 30.
From Mich. 35 *Eliz.* to Trin. 6 *Ja.*
From Eaſt. 10 *Ja* to Mich. 13 *Ja.*
From Hil. 13 *Ja.* to Mich. 17 *Ja.*
From Hil. 17 *Ja.* to Trin. 21 *Ja.*
From Mich. 21 *Ja.* to Trin. 4 *Car.*
From Mich. 4 *Car.* to Mich. 9 *Car.*
From Hil. 9 *Car.* to Eaſt. 14 *Car.*
From Trin. 14 *Car.* to Trin. 18 *Car.*
From Eaſt. 18 *Car.* to Mich. 1649.
} both Incluſive.

No. 9. Continued.

Repertorium.

From 2 8 *Edw.* 3 to 12 *Hen.* 4. both incluſive
From 1 *Hen.* 5 incluſive to the end of the reign of *Hen.* 6
From 1 *Edw.* 4 to *Rich.* 3. both incluſive
From 1 *Hen.* 7 to Trin. 14 *Hen.* 7. both incluſive
From Mich. 29 & 30 *Eliz.* to Hil. 45 *Eliz.* both incluſive.
From Eaſt. 1 *Ja.* to Eaſt. 8 *Car.*

Bundles of Rolls.

Miich. Hil. Eaſt. Trin. 19 *Ja.* 4 Bundles.
Mich. Hil. Eaſt. Trin. 20 *Ja.* 4
Mich. Hil. Eaſt. Trin. 21 *Ja.* 4
Mich. Hil. Eaſt. Trin. 22 *Ja.* 4

16 Bundles of Rolls.

No. 10 Empty.

No. 11.

Bundles of Rolls.

Mich. Hil. Eaſt. Trin. 1 *Eliz.* 4
——————Eaſt. Trin. 2 *Eliz.* 2
Mich. Hil. Eaſt. Trin. 4 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 5 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 6 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 7 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 8 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 9 *Eliz.* 4
Mich. Hil. Eaſt. Trin. 10 *Eliz.* 4 } Bundles.
Mich. Hil. Eaſt. ——————11 *Eliz.* 3
Mich. Hil. ——————Trin. 12 *Eliz.* 3
Mich. Hil. Eaſt. Trin. 13 *Eliz.* 4
Mich. Hil. Eaſt. & Trin. 14 *Eliz.* 4
Mich. Hil Eaſt. & Trin. 15 *Eliz.* 4
Mich. Hil. Eaſt. & Trin 16 *Eliz* 4

56

No. 11. Continued.

	56	
Mich. Hil. Eaſt. Trin. 17 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 18 *Eliz.* 4		
Hich. Hil. Eaſt Trin. 19 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 20 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 21 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 22 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 23 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 24 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 25 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 26 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 27 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 28 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 29 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 30 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 31 *Eliz.* 4	170	Bundles of Rolls.
Mich. Hil. Eaſt' Trin. 32 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 33 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 34 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 35 *Eliz.* 4		
Mich. Hil. Eaſt. Trin. 36 *Eliz.* 4		Remembrance Roll of
Mich. Hil. Eaſt Trin. 37 *Eliz.* 4		Writs of the 36 Year.
Mich. Hil. Eaſt Trin. 38 *Eliz.* 4		A Bunlde of Rolls
Mich. Hil. Eaſt Trin. 39 *Eliz.* 4		of Iſſues forfeited by
Mich. Hil. Eaſt. Trin. 40 *Eliz.* 4		Writs of the 38 Year.
Mich. Hil. Eaſt Trin. 41 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 42 *Eliz.* 4		
Mich. Hil. Eaſt Trin. 43 *Eliz.* 4		
Mich. Hil. Eaſt. Tirn. 44 *Elix.* 4		
Mich. Hil. ——— — 45. *Eliz.* 2		
	170.	

N°. 12.

Bundles of Rolls.

One bundle of rolls intituled at the head of the 4th roll *Placita & aſſize capta coram W. de Eborum Et ſociis ſuis itinerantibus apud Norvicum die lune proxima poſt feſtum ſci Hilar' anno Regni Regis Henrici filij Regis Joh'is 24to.*

Edward the Firſt, 2 bundles namely *Annis* 22 & 25.

Edward the Second, 1 bundle namely *Anno 2do.*

Edward the Third, 10 bundles namely *Annis* 3, 17, 25, 27, 28, 30, 35, 41, 47, 48.

Edward the Fourth, 20 bundles namely *Annis* 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, whereof the ſecond roll is much damaged by wet.

Edward the Fifth, 1 ſmall bundle.

Henry the Fourth, 4 bundles namely *Annis* 1, 2, 5, 6.

Henry the Fifth, 4 bundles namely *Annis* 1, 3, 5, 8.

Henry the Sixth, 12 bundles namely *Annis* 3, 4, 5, 6, 10, 15, 18, 21, 23, 24, 30, 34.

Henry the Seventh, 13 bundles namely *Annis* 1, 4, 5, 7, 9, 10, 14, 15, 17, 19, 20, 22, 24.

N°. 13.

Richard the Second, 3 bundles namely *Annis* 1, 9, 10.

Richard the Third, 2 bundles namely *Annis* 1, 3.

Henry the Eighth, 39 bundles namely *Annis* 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 10, 10, 11, 12, 14, 15, 18, 19, 19, 20, 21, 22, 23, 24, 25, 26, 27, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38.

Edward the Sixth, 9 bundles namely *Annis* 1, 3, 4, 4, 4, 5, 5, 6, 7.

Mary——— 2 bundles namely *Anno* 1, 1.

Philip & Mary 16 bundles namely *Annis* 1 & 2, 1 & 2, 1 & 2, 1 & 2, 2 & 3, 2 & 3, 2 & 3, 3 & 4, 3 & 4, 3 & 4, 3 & 4, 4 & 5, 4 & 5, 4 & 5, 4 & 5, 5 & 6.

A NEW

A
NEW REFERENCE
TO THE
AFORESAID RECORDS.

N.B. The Figures refer to the Preſſes wherein the Records reſpectively are depoſited.

Years of the Reign.	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
1 Edw. 3.								
2								
3							7	
4						7		
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15							7	
16								
17								
18								
19								
20								
21								
22					two Files of Writs in this Year Terms unknown 6.			

Years of the Reign	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
23 Ed. 3.								
24								
25					7			
26								
27								
28								
29								
30								
31								
32								
33								
34								
35							7	
36							6	
37								7
38								
39					6			
40					6			
41								
42								
43								
44						7		
45							7	
46					6			
47								
48								
49								
50								
51								
52								

1 Bundle of Rolls in the Reign of Henry the Third.
2 Bundles of Rolls in the Reign of Edward the Firſt.
1 Bundle of Rolls in the Reign of Edward the Second.
10 Bundles of Rolls in the Reign of Edward the Third.
All in Preſs 12.
1 Repertorium during the Reigns of Edward the Third, Richard the Second, and Henry the Fourth. In Preſs 9.

1 Ric. 2.									
2									

Years of the Reign.	Bills Mic.	Hil.	East.	Tri.	Writs Mic.	Hil.	East.	Tri.
3 Ric. 2.								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16							7, 7	
17								
18								
19					7			
20								
21								
22								
23								

3 Bundles of Rolls of Richard the Second. In Preſs 13.

1 Hen. 4.									
2									
3									
4									

4 Bundles of Rolls of Henry the Fourth. In Preſs 12.

1 Hen. 5.									
2									
3									
4									
5									
6									
7									
8									
9									
10									

4 Bundles of Rolls of Henry the Fifth. In Preſs 12.
Repertorium of the Reigns of Henry the Fifth and Henry the Sixth. In Preſs 9.

Years of the Reign.	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
1 Hen. 6.								
2								
3								
4			7					
5								
6								
7								
8								
9								
10								
11	Bills and Petitions no Term							
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
26	6							
27								
28								
29								
30								
31								
32								
33	6							
34								
35								

Years of the Reign.	Bills Mic.	Hil.	East.	Tri.	Writs Mic.	Hil.	East.	Tri.
36 HEN. 6.								
37								
38								
39								

12 Bundles of Rolls of the Reign of Henry the Sixth. In Preſs 12.

1 EDW. 4.					File Term unknown 6.		7	
2								
3								
4								
5	6							
6								
7								
8							7	
9					7			
10								
11						7		
12					7			
13								
14	one File unknown 6.							
15	6							
16			7		7			7
17							7	
18							6	
19						7		
20							7	
21								
22								
23					one File in this Reign unknown 6.			

20 Bundles of Rolls of the Reign of Edward the Fourth. In Preſs 12.
Repertorium of the Reigns of Edward the Fourth, Edward the Fifth, and Richard the Third. In Preſs 9.

1 EDW. 5.								

A ſmall Bundle of Rolls of the Reign of Edward the Fifth. In Preſs 12.

Years of the Reign.	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
1 Ric. 3.								
2	looſe Bills 6.							
3								

2 Bundles of Rolls of the Reign of Richard the Third. In Preſs 13.

1 Hen. 7.								
2								
3	6							
4			7					
5				7		7		
6		7						
7								
8								
9								
10						7, 7, 7 imp.		
11	7							
12								
13								
14								
15								
16								
17					7	7, 7	7	
18								
19					7	7		
20	one File no Term 7.						7	
21							7	
22								
23						7		
24								

13 Bundles of Rolls of the Reign of Henry the Seventh. In Preſs 12.
Repertorium of the ſame Reign. In Preſs 9.

1 Hen. 8.	7	7	one File no Term 6.			7, 7	7	7
2		7	7	7		7, 7, 7	7, 7	
3	7, 7		7	7	7, 7			7
4	7	7 qu.			7	7	7	7
5			7			7	7	7, 7
6	one File no Term 7.				7	7	7, 7	

Years of the Reign.	Bills Mic.	Hil.	East.	Tri.	Writs Mic.	Hil.	East.	Tri.
7 Hen. 8.	7	7		7		7,7		
8				7	7	7	7,7	7
9	7	7	7	7	7	7	7	7
10	7	7	7		one File unknown 7.		7	
11	7	7	7		7	7		7
12	7,7		7			7	7	7
13			7,7	7,7,7			7	7
14	three Files in Henry 8, all of Trin. Years unknown 7.				7		7	7
15	7	7		7	7		7	7
16					7	7,7		7
17		7		7	7	7		7
18	7,7	7	7	7	7	7		7
19			7		7	7,7		7,7
20	7 abt.	7				7,7	7	
21	7	7	7	7	7,7			7
22	7			7	6 qu.	7	7,7	6,7
23	7	7				7	7	7
24		7,7			7		7	7
25	7,7		7	7	7,7	7	7	
26	7	7			7,7	7		
27	7	7	7	7	7	7	7	7
28			7			7		7
29		7			7			7
30	7		7		7		7	7
31	7	7	7,7	7	7			7
32	7	7	7	7	7	loose Writs in this Reign 7.		
33		7	7		7	7	7	
34	7	6	7	7		7	7	7
35			7		7	7	7,7	
36	7	7			7		7	
37	7		7	7	7	7,7		
38	7		7		7		7	

39 Bundles of Rolls in the Reign of Henry the Eighth. In Preſs 13.

1 Edw. 6.	6				7	7		7
2	7	7		6	7	7	7	7

Years of the Reign.	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
3 Edw. 6.		7	7	6	7	7 looſe 6.	7	7 looſe
4	7	7		6			7	7
5	7		7				7	7
6	7	6	7					
7			7					

9 Bundles of the Reign of Edward the Sixth. In Preſs 13.

1 Mary	7		6,7	6		7	7	7
1 & 2 Ph. & Mary.	one File no Term or Year 7.				7	7	7	7
2 and 3	7	7					7	7,7
3 and 4		7	7		7,7	7	7	
4 and 5	7,7	7	7,7			7		
5 and 6	7							

2 Bundles of Rolls in the firſt Year of Queen Mary, and 16 Bundles in the Reign of Philip and Mary. In Preſs 13.

1 Eliz.	7			7	7		7	7
2						7	7	7
3	7			7		7	7	7
4	6,7		7		7	7	7	7
5			7	7	7	7	7	7
6		7	7		7	7	7,7	7
7	7		7			7	7	7
8	7	7	7	7	7	7	7	7
9	7		7	6	7	7	7	7
10	7	7		7	7	7	7	7
11	7	7	7	7	7	7,7	7	7
12	6	6	6	6	6	6	6	6
13	7,7		7		6	6,7	6,7	6
14	6	6	6		6	6	6	6
15	7	7	7			7	7	7
16	6,7	7		9	7			6,7,7
17	7	7	7	7,7	7	7	7	7
18						7		
19		7	7	7	7,7	7	7	7
20	7	7	7	7		7	7	7
21	7	7		7	7	7	7	7

Years of the Reign.	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
22 Eliz.	7	7	7	7	7	7	7	7
23	7	7	7		7	7	7	7
24	6	6	6	6	6	6	6	6
25						7		
26			7		7	7		7,7
27	7	7	7	7	7,7	7		7
28	6	6	6	6	6	6	6	6
29	7	7	7	7	7	7	7	7
30	7	7	7	7	7	7	7	7
31	6	6	6	6	6,7	6	6	6
32	7	7	7	7	7	7	7	7
33	6	6	6	6	6	6	6	6
34	7,7	7,7	7	7			7	7
35	6	6	6	6	6	6	6	6
36	7	7	7	7	7	7,7	7	7
37	7	7	7	7	7	7	7	7
38	6	6	6,7	6	6	6	6	6
39	7							
40	6	6	6	6	6	6	6	6
41	7	7,7	7	7	7,7	7	7,7,7	7,7
42	7	7,7	7	7	7		7	7
43								
44								
45								

170 Bundles of Rolls in Eliz. Reign. In Preſs 11.
13 Remembrance Rolls of Writs in the Reign of Queen Eliz. Preſs 7.
1 Ditto. In Preſs 11.
1 Remembrance Roll of Iſſues forfeited by Writs. In Preſs 11.
1 Book of Appearances in the ſame Reign. In Preſs 9.
5 Books of Orders in the ſame Reign. In Preſs 9.
1 Repertorium in the ſame Reign. In Preſs 9.

1 James.	1	1	1	1	1		1	1
2	1	1	1	1	1		1	1
3	1	1	1	1	1	1	1	1
4	1				1	1		1
5	1	1	1	1	1	1	1	1
6	1		1	1	1	7	1	1
7	1	1	1	1	1	1	1	1

Years of the Reign	Bills Mic.	Hil.	Eaſt.	Tri.	Writs Mic.	Hil.	Eaſt.	Tri.
8 James.	1,7	6 looſe	1	1	1	1	1	1
9	2,7 imp.	2	2	2	2	2	2	2
10	2 Bills no Term.	2	2	2	2	2	2	2
11	2	2	2	2	2	2	2	2
12	2	2	2	2	2	2	2	2
13	2	2	1,2	2	2	2	2	2
14	2	2	1,2	1	2	2 looſe	2 6	2
15	3	3	3	3	3	3	3	
16	3	3	3	3	3 looſe	3 6	3	3
17	3		3	3	3	3	3	3
18	3	3	3	3	3	3	3	3
19	3	3	3	3	3	3	3	3
20	3	3	3	3	3	3	3	3
21	3	3	3	3	3	3	3	3
22	3	3	3	3	3	3	3	3

71 Bundles of Rolls in the Reign of James the Firſt. In Preſs 8.
16 Bundles of Rolls in the ſame Reign. In Preſs 9.
4 Books of Bails in the ſame Reign. In Preſs 9.
3 Books of Appearances in the ſame Reign. In Preſs 9.
4 Books of Orders in the ſame Reign. In Preſs 9.

1 Char.	4	4	4	4		4	4	4
2	4	4	4	4	4	4	4	4
3	4	4	4	4	4	4	4	4
4	4	4	4	4	4	4	4	4
5	4	4	4		4	4	4	4
6	4	4	4	4	4	4	4	4
7	4	4	4	4	4	4	4	4
8	4	4	4	4	4	4	4	4
9	4	4	4	4	4	4	4	4
10	5,7	5	5	5	5	5		5
11	5	5	5	5	5	5	5	5
12	5	5	5	5	5	5	5	5
13	4,7	4	4	4		4	4	4
14	4	4	4	4	4	4	4	4

Years of the Reign.	Bills Mic.	Hil.	East.	Tri.	Writs Mic.	Hil.	East.	Tri.
15 CHAR.	5	5	5	5	5	5	5	5
16	5	5	5	5	5	5	5	5
17				5	5	5	5	5
18	4	4	4	4	4	4	4	4
19, 1643			4	4				4
20	4	4	4	4	4	4	4	4
21	4	4	4	4	4	4	4	4
22	4	4	4	4	4	4	4	4
23	4	9	4	4	4	4	4	4
24, 1648	4	4	4	4	4	4	4	4

Bundles of Rolls of Charles the firſt's Reign. In Preſs 9.
3 Books of Appearances of the ſame Reign. In Preſs 9.
4 Books of Orders of the ſame Reign. In Preſs 9.
1 Repertorium of this and King Charles's Reign. In Preſs 9.

1649	4	4	4	4	4	4	4	4
1650	4	4	4	4			4	4
1651	5	5	5	5	5	5		5
1652	5	5	5	5	5	5	5	5
1653	5	5	5	5	5	5	5	5
1654	5	5	5	5	5	5	5	5
1655	5	5	5	5	5	5	5	5
1656	5	5	5	5	5	5	5	5
1657	5	5	5	5	5	5	1,5	5
1658	1	1	1,9	1			1	1
1659	1	1	1,9	1	1	1,1	1	1
1660								

4 Books of Appearances during the Interregnum. In Preſs 9.
1 Book of Orders during the ſame Time. In Preſs 9.

13 CAR. 2.								
14								
15								
16								
17								
18								
19								
20							4	


G.R.
III.

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END of the FIRST VOLUME.



ERRATA.

THE hurry of getting into the preſs to make good the author's advertiſement in *November* laſt, has prevented his making good that method and uniformity which he had intended in this volume, and that of getting out of the preſs ſo long after the end of the term in which it was to have been publiſhed, has occaſioned many erratas, ſurpluſages, and omiſſions which would otherwiſe have been corrected: the few of them as follow, the reader is deſired to correct, and forgive the reſt where the ſenſe is preſerved.

In the preface, page 2. line 22. ſtrike out *hath*, and l. 24. ib. ſtrike out *that*, p. 3. l. 8. for *treaſury* read *treaſurers*, l. 23 and 26. after the word *ſearched* inſert *for*, p. 6. l. 28. for *corom* read *coram*, p. 13. l. 16. for *are* read *is*, l. 18. ib. for *ſearchers* read *ſearcher*, l. 22. was not intended to be in *Italicks*, p. 22. l. 16. for *Mr.* read *Dr.* p. 41. inſtead of *deſco* read *de facto*, inſtead of *claro* read *clero*, inſtead of *clicus* read *clico*, p. 43. inſtead of *eſcaetorum* read *eſcaetorem*, p. 51. inſtead of *voluet* read *toluet*, p. 57. for *jundino* read *nundino*, p. 107. for *davers* read *Davers*, p. 108. for *ni ceulx* read *mieux*, p. 112. for *ſlander or* read *ſlander of*, p. 451. l. 13. read *no* before bundles, and ſtrike out *in*, p. 9. l. 16. inſtead of *this and king* read *James and*.